Jurisdictional Statement

No. 81-6202

Supreme Court, U.S.
FILED
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Alexander L. Stevas, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

Naomi Addison, et al.,)
)
Appellants,)
)
v.)
)
City of Chester,)
)
Appellees.)

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SUPREME COURT, U.S.

JURISDICTIONAL STATEMENT

Questions Presented

1. Whether the Chester, South Carolina parade permit ordinance, as interpreted by the Supreme Court of South Carolina, is unconstitutional on its face in that it grants to a mayor and city council discretion to refuse issuance of a permit to engage in First Amendment activities without defining with adequate precision the standards to be applied in the exercise of that discretion.

2. Whether a mayor or city council may constitutionally deny equal access to the use of city streets for First Amendment purposes by refusing to consider those permit requests made by persons who are not residents of the city, or who are personally disfavored, or who are members of a disfavored political group.

3. Whether a mayor or city council may constitutionally deny a parade permit because of a subjective fear, unsupported by probative evidence, concerning the possibility of conflict between the permit applicants and a wholly unrelated group planning to assemble on the same day in a building near the proposed terminus of the parade route.

Parties

The Appellants in the Supreme Court of South Carolina, defendants below, were Naomi Addison*, J.C. Bowler Jr., Adalese Byrd, Mary Canty, Heyward Carter, Marvis Clark Chisolm, William A. Chisolm, Eric Clark, Betty G. Coad, Martha Woods Craig*, Ruby Cunningham*, Viola Cunningham*, Barbara Ann Franklin, Carrie Franklin*, Johnny Franklin,Golden A. Frinks, Frank Leslie Gladden, Willie Mae Gregory*, Elmore Keener*, Betty Jean Killian*, Joe Louis Lee, Willie Morria, Leroy Pendergrass*, Annie Lee Peterson*, George Peterson, Patricia Poag, Sister Mary Piniski, Rahium Sheelde, Rev. Shardrick Lewis Stringfellow*, Rev. Bill Stringfellow*, James Strong Jr., Janie Mae Talfund, Rev. F.D. Taylor, Elizabeth Wilbur, Corelia Woods*.

Respondent in the Supreme Court of South Carolina, prosecutor below, was the City of Chester (South Carolina).

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* Thirteen Appellants have joined in the accompanying Rule 46 motion.

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Opinions Below

The opinion of the South Carolina Supreme Court, as yet unreported, is attached as Appendix A, at page a1. The opinion of the Court of General Sessions is attached as Appendix B, at page a3. The opinion of the Recorder's Court is attached as Appendix C, at page a20.

Jurisdiction

This case arose from the refusal by the Mayor, Tr. 67, App.E a24,and City Council, Tr. 23-24, of Chester, South Carolina to issue a parade permit for a civil rights demonstration. By Chester City Code, § 27-202, the Mayor and the City Council each have independent power to issue a permit. The Mayor, in a statement released to the press on November 6, 1979, declared that there would be no parade permits issued "where Golden Frinks or the Communist Party is allowed to be involved." Tr. 20-22, 68, App.E a25. Golden Frinks subsequently submitted to the Mayor, on behalf of the Appellants, a request for a permit to parade on November 11, 1979. Tr. 69, App.E a26. The Mayor refused to issue the requested permit. See Tr. 31,67. The Mayor later testified that the City Council also refused to issue the requested parade permit. Tr.24. On November 11, 1979, Appellants, relying upon the Constitution, marched without a parade permit. They were arrested and convicted in Recorder's Court of parading without a permit.

Judgment upholding the constitutionality of Appellants' prosecution under the ordinance was entered by the City Recorder on December 6, 1979. Defendants' appeal to the Court of General Sessions was dismissed on June 21, 1980. On appeal to the Supreme Court of South Carolina, Appellants' convictions were affirmed by opinion filed November 12, 1981.

Jurisdiction of this appeal is conferred upon the Court by 28 U.S.C. § 1257, which in pertinent part states:

> Final judgments or decrees rendered by the highest court of a State in which a decision may be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and a decision is in favor of its validity.

The final judgment of the highest court in South Carolina, entered on November 12, 1981, decided in favor of the validity of an ordinance which was clearly drawn into question on the ground of its being repugnant to the U.S. Constitution. As the Supreme Court of South Carolina stated:

> By means of pretrial motions, the appellants attacked this ordinance as unconstitutional on its face. They further alleged that their arrests were the consequence of a discriminatory denial of a permit, their subsequent arrests becoming thereby infringements upon constitutionally protected freedoms of speech and association. App.A, al.

The South Carolina Supreme Court upheld the validity of the city ordinance after its validity was clearly drawn into question, thereby meeting the statutory jurisdictional requirements of 28 U.S.C. § 1257(2). See Erzoznik v Jacksonville, 422 U.S. 205 (1975).

Constitutional Provisions and Statutes Involved

First Amendment, United States Constitution:

> Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment, United States Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

Chester, South Carolina, City Code, §§ 27-201, 27-202, and 27-203, the pertinent parts of which are as follows:

> § 27-201. Permit required to stage parade; exceptions.
>
> It shall be unlawful for any person or organization to stage a parade or procession on any of the streets or in any other public place within the City without first having applied for and secured a special permit from the Council to do so, excepting funeral processions, the armed forces of the U.S. Army or Navy, the military forces of the police and fire departments of the City.
>
> § 27-202. Application for permit; issuance of permit.
>
> Such application shall contain the following information:
> (1) the time of such proposed parade or procession,
> (2) the streets to be used,
> (3) the number of persons or vehicles to be engaged, and
> (4) the purpose of such parade or procession.
>
> Upon receipt of such application, the Mayor or Council shall, in his or its discretion, issue a permit subject to the public convenience and public welfare. [emphasis added]
>
> § 27-203. Penalties to violate § 27-201 and § 27-202.
>
> Anyone violating the provisions of §§ 27-201 and 27-202 shall upon conviction be imprisoned for a period not to exceed thirty days or fined in an amount not to exceed one hundred dollars.

Statement of the Case

On or about November 6, 1979, the Mayor of Chester, South Carolina, James T. Funderburk, formally issued a statement to the press and public, which read in relevant part as follows:

> If our Chester citizens want to march, then the Chester City Council will consider their request for a permit, but there will be no more permits issued where Golden Frinks or the Communist Party is allowed to be involved in any parades and so forth.
> ... It is our hope and prayer that this statement will be the end of outsiders interfering in Chester.Tr. 68,App.E a25,lin. 31-34, 51-52.

Shortly thereafter, Appellants submitted a parade permit request signed by Southern Christian Leadership Conference organizer Golden Frinks. The permit request described the proposed parade route, using several city streets and ending at the Chester County courthouse. Tr. 69,App.E a26. The City of Chester is the seat of Chester County government. Although he had authority to issue the requested permit, Mayor Funderburk refused to do so. Chester City Code § 27-202,supra; Tr. 23, 24, 67.

In a letter dated November 10, 1979, one day prior to the proposed parade, Chester's Mayor Funderburk stated the reason for refusing to issue the parade permit as follows:

> The route of the parade proposed in your application would terminate at the same location at approximately the same time [as an assembly attending Veterans Day ceremonies at the County courthouse] and a disruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community. Tr. 67, App.E a24.

There is no evidence that Mayor Funderburk ever attempted to arrange for an alternative terminus for the proposed parade route. Nor is there evidence to support the finding that disruption would result if the parade were to end at the county courthouse where, coincidentally, indoor ceremonies were to be held. The Veterans Day ceremonies inside the courthouse "involved no parade or procession through the streets of Chester," App.B, a4-a5, or any use of the city streets at all. Appellants' three previous street demonstrations had been entirely peaceful. Tr. 52,55.

Appellants were not aware of the newly stated reasons for denying the permit, and were not even aware of any other demonstration on November 11. Tr. 56,63,65. Appellants believed that they had a constitutional right to use Chester's streets for free speech, peaceable assembly, and petitioning government for redress of grievances, notwithstanding the Mayor's patently unlawful reasons for refusing to issue the parade permit. Having no adequate civil remedy for appealing the unlawful refusal before the planned demonstration, Appellants went forward with the civil rights demonstration described in their permit request. Appellants were arrested as their peaceful demonstration entered the Chester city limits. Tr. 56,58.

On December 3, 1979, in the Recorder's Court of Chester, Glenn B. Manning, attorney for Defendants, moved to set aside or dismiss the charges against the Defendants on the grounds that the City of Chester ordinance under which they were convicted was unconstitutional on its face and as applied to Appellants in this particular case. On December 6, 1979, Lamar H. Kelsey, III, City Recorder, upheld those ordinances as constitutional on their face and as applied. App.C.

The Appellants were tried in Recorder's Court in Chester and found guilty on December 13, 1979. An appeal was taken to the Court of General Sessions, Sixth Judicial Circuit, before Judge George F. Coleman. Judge Coleman affirmed the lower court's decision on June 21, 1980. App.B. The case was then appealed to the Supreme Court of South Carolina, which affirmed the judgment of the lower court. App.A.

Reasons for Plenary Consideration and Reversal of the Decision of the South Carolina Supreme Court.

The decision of the Supreme Court of South Carolina affirming the conviction of Appellants for violating the parade permit ordinance of Chester, South Carolina, should be reversed for the following reasons:

The Chester City ordinance is unconstitutional on its face. The ordinance gives undue discretion to the Mayor and City Council, without any precise standards defining the circumstances under which the Mayor or City Council may refuse to issue a parade permit for a civil rights demonstration. The construction of a similar ordinance by the Supreme Court of South Carolina has failed to cure this constitutionally fatal defect in the ordinance.

In a 1961 case the Supreme Court of South Carolina interpreted a similarly broad ordinance as constiututional by reading into that ordinance the standard of "safety, comfort and convenience of persons using the streets." City of Darlington v. Stanley, 239 S.C. 139, 147, 122 S.E.2d 207,211 (1961). But this construction insufficiently narrows the discretion of the Mayor and City Council under the parade permit ordinance to distinguish this ordinance from the one declared unconstitutionally vague by the United States Supreme Court in the 1969 case of Shuttlesworth v. Birmingham.

In the landmark decision of Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969), the Supreme Court addressed the issue of undue discretion. In that case, a group of civil rights demonstrators had been denied a permit to march through the streets of the City of Birmingham, based on a city ordinance that read, in pertinent part:

> It shall be unlawful to organize or hold, or to assist in organizing or holding, or to take part or participate in any parade or procession or other public demonstration on the streets or other public ways of the city, unless a permit therefor has been secured from the Commission.
>
> To secure such permit, written application shall be made to the Commission ... .
>
> The Commission shall grant a written permit for such parade, procession or other public demonstration ... unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused. Id.149-50.

This Court, in invalidating the ordinance, stated:

> the members of the Commission were to be guided only by their own ideas of "public welfare, peace, safety, health, decency, good order, morals or convenience." This ordinance as it was written therefore fell squarely within the many decisions of this Court over the last 30 years holding that

> a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective and definite standards to guide the licensing authority, is unconstitutional. Id.150-51.

The ordinance of the City of Chester is even less specific than was that of the City of Birmingham in Shuttlesworth. Under Chester's ordinance the decision to grant or refuse a permit request is committed to the unstructured "discretion" of Mayor and City Council limited only by vague reference to the "public convenience and public welfare." Chester City Code, § 27-202 (4).

In Edwards v. South Carolina, 372 U.S. 229 (1963), where demonstrators were arrested and convicted of breach of the peace for demonstrating at the seat of government, the Supreme Court held that, under the circumstances, South Carolina infringed the demonstrators' constitutionally protected rights of free speech, free assembly and freedom to petition the government for redress of their grievances. Id., at 235. In Edwards, the Supreme Court determined the statute to be so vague as to allow punishment of orderly political discussion and assembly. As in Edwards, the Appellants in the present case peacefully assembled for the purpose of expressing and seeking redress for their grievances at the seat of government. That the Chester County Courthouse was being used for another assembly at the time that Appellants planned to end their demonstration there is certainly insufficient reason to deny a parade permit. To deny a permit there must be a clear showing that the demonstrators presented a clear and present danger of committing a breach of the peace, by inciting to riot or by use of "fighting words." See id. 236.

In Edwards this Court held that:

> [T]he Courts of South Carolina have defined a criminal offense so as to permit conviction of the petitioners if their speech 'stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand.'Id. 238 (quoting Terminiello, infra).

Refusal to grant a parade permit on any of these grounds is equally unconstitutional. But that is what the Chester Mayor and City Council purported to do by the Mayor's November 10 letter. Because

the Chester ordinance, as interpreted by the Supreme Court of South Carolina, gives unfettered discretion to the Mayor and City Council to deny a parade permit on such grounds, it is unconstitutional on its face. In accordance with long standing precedent, the Supreme Court should reverse the decision upholding Appellants' conviction based on that ordinance.

II

The Chester City ordinance under which the Appellants were convicted, even if not unconstitutional on its face, is unconstitutional as it was applied in Appellants' case.

a) Mayor Funderburk refused Appellants a permit just five days after he released his statement to the press announcing that parade permits would only be issued to Chester citizens, and that no permits would be issued to groups that included Golden Frinks or Communists. App. E, Tr. 68. The Mayor has independent authority to issue parade permits under City Code § 27-202. It was Mayor Funderburk who signed the November 10 letter refusing to issue the permit.

It can only be assumed that the reasons for refusing to issue Appellants a parade permit that Mayor Funderburk announced on November 6 were in fact the selfsame reasons he did, several days later, refuse to exercise his discretion to issue the permit for Appellants' November 11 civil rights demonstration. Denial of a permit for such discriminatory reasons denies equal protection of the law and First Amendment rights of association in blatant violation of the Constitution. Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972); Healy v. James, 408 U.S. 169 (1972).

The Mayor did offer a different reason in his formal refusal dated November 10. Tr. 67. There is, however, no evidence that Appellants were even aware of this letter at the time of the demonstration on Sunday, November 11. Tr. 63. In any event, such a letter cannot cure the clearly enunciated unconstitutional reasons for denying the permit which the Mayor had communicated to the whole public through the press only days before. The reason for refusing to issue the per-

mit stated in the Mayor's letter was nothing but a thin pretense for papering over the Mayor's announced discriminatory motives in denying the parade permit.

It is apparent from the record that the concern of Mayor Funderburk was not that there would be a breach of the peace, but rather that the views expressed by the Appellants would be different than his. Tr. 68, lines 21-34. Three prior permits had been granted to Appellants as long as they expressed themselves in a manner acceptable to the Mayor, but once Appellants' expression went beyond what the Mayor felt it should, the fourth permit was denied. Tr. 67, 68.

b) Mayor Funderburk stated as the reason for refusing to issue the permit that "a disruptive consequence is likely to occur." Tr. 67. But the Mayor may not arbitrarily decide that an indoor Veterans Day demonstration will include violent and lawless persons, necessitating a repression of Appellants' First and Fourteenth Amendment rights. Moreover, even if there were persons among the Veterans' demonstration opposed to the views of the civil rights demonstrators, this would not constitute a legitimate reason to deny a permit. National Socialist Party v. Village of Skokie, 432 U.S. 43 (1977); Collins v. Smith, 447 F. Supp. 676 (1978).

The Supreme Court has upheld the power of a municipality to:

> specify the "time, place and manner" of the parade in order to accommodate competing demands for public use of the streets. Shuttlesworth v. City of Birmingham, 394 U.S. 147 155-56.

But the Court has denied municipalities the power to enforce a "heckler's veto" so as to deprive particular groups the use of public places for exercise of First Amendment rights. See Hague v. Committee for Industrial Organization, 307 U.S. 406, 515-16 (1939); Terminiello v. Chicago, 337 U.S. 1 (1949). The constitution speaks even more loudly where city officials conjure up the prospect of a hostile crowd in the absence of any objective, credible evidence. Justice Harlan eloquently warned against censoring public expression merely because a "hypothetical coterie of the violent and lawless" might be suf-

ficiently annoyed to retaliate. Cohen v. California, 403 U.S. 15, 23 (1971).

The City presented no objective, credible evidence showing that the indoor Veterans demonstration, even if it did terminate at the same time and vicinity as Appellants' outdoor march, would be likely to produce any disruptive consequence. Tr. 53. Police protection that Sunday was ample. Tr. 56. Appellants' three previous demonstrations had been peaceful and orderly. Tr. 52,55. And there was no evidence that the purpose and intent of Appellants' fourth demonstration would be any different. The group of men and women, including a nun and other religious leaders, who participated in the planned November 11 civil rights demonstration up to the Chester city limits were intent upon communication, not disruptive militant action or provocation by use of fighting words or incitement to riot.

The Supreme Court has unequivocally held that a mere subjective fear of a breach of the peace, which is unsupported by objective and credible evidence, can never justify the suppression of First Amendment rights. Edwards v. South Carolina, 372 U.S. 229 (1963); Cox v. Louisiana, 379 U.S. 536 (1965). Basing a permit denial on a finding concerning the likelihood of "disruptive consequence," Tr. 67, in the absence of any evidence of Appellants' probable responsiblity therefor, violated Appellants' constitutional right to due process of law. See Gregory v. Chicago, 394 U.S. 111 (1969).

Because the discriminatory and procedurally defective manner in which the Chester ordinance was applied to the Appellants is repugnant to the Constitution, the decision of the Supreme Court of South Carolina should be reversed, regardless of whether or not the ordinance is, on its face, unconstitutional.

III

The justification for the city's action was stated by the trial court as follows:

> It appears that the City Council had knowledge of another assemblage in the path of the proposed march by the applicants. App. C, a21.

However, this finding will not stand up to the evidence in the case. Moreover the trial court made no attempt to weigh the effect this other assembly might have on the legitimate interests of the city. The City of Chester may well have some legitimate interest in regulating some demonstrations in the interest of maintaining public order, by controlling the time, place and manner of those demonstrations. But the justification for selective exclusion from a public forum must be carefully scrutinized, because demonstrating clearly involves expressive conduct within the protection of the First and Fourteenth Amendments. Shuttlesworth v. Birmingham, 394 U.S. 147 (1968), Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972), Collins v. Chicago Park District, 460 F.2d 746 (7th Cir. 1972).

As was stated by the Court in Grayned v. City of Rockford, 408 U.S. 104, 116 (1972):

> Our cases make clear that in assessing the reasonableness of a regulation we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest.

The prohibition of Appellants' civil rights demonstration in the streets of Chester because another assembly was meeting near the terminus of the proposed parade route was unreasonable, particularly in light of the fact that pure political communication was involved. Nor was this manner of regulation narrowly tailored to meet any possible traffic problem that might have existed outside the creative imaginations of the responsible city officials.

As Chief Justice Hughes wrote in De Jonge v. Oregon, 299 U.S. 353, 365 (1937), it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is one of the chief distinctions that sets our democracy apart from totalitarian regimes.

The struggle for civil rights, particularly in the southern states, has depended upon the Federal courts to preserve this essential democratic framework for working out differences among blacks and whites. Even with the progress that was made in past

years, the preservation of the right of free expression for those who work for civil rights in the South and elsewhere requires a judiciary ready to enforce the Constitution where rights have been denied under a thin guise of regulatory pretense. If the democratic freedoms of those who are struggling for civil rights in Chester, South Carolina are to be preserved, it must be through the ready vigilance of this Court.

Conclusion

Appellants were entitled to procedural fairness, not procedural formality in the processing of their duly submitted request for permission to use the streets of Chester, South Carolina for a civil rights demonstration. They were denied due process and equal protection of the law. They were denied their constitutional right to freedom of expression. The fundamental rights of citizens struggling for civil rights must not, in the guise of regulation, be abridged or denied.

The Chester parade ordinance authorized the Mayor to refuse a permit on his unsupported subjective opinion that the "peace and tranquility of the community," Tr. 67, would thus be promoted. Prohibition of all speech would undoubtedly promote such interests. But official suppression of First Amendment rights cannot substitute for the city's duty to maintain order while accommodating its legitimate interests in traffic control to the exercise of those rights.

Because Appellants were denied fundamental First and Fourteenth Amendment rights by the City of Chester's refusal to issue a parade permit, and subsequent prosecution of this case, the Supreme Court of the United States should reverse the Supreme Court of South Carolina's decision upholding Appellants' conviction for violation of the Chester City Code Ordinance §27-201, et seq.

Respectfully submitted,

Robert Hager
Counsel of Record
John Clewett
Daniel P. Sheehan

Christic Institute
1324 North Capitol Street
Washington, D.C. 20002
(202) 797-8106

Mel Gibbs, Of Counsel

Dated: February 9, 1982

Appendix

APPENDICES

APPENDIX A: OPINION OF SOUTH CAROLINA SUPREME COURT.....a1

APPENDIX B: ORDER OF COURT OF GENERAL SESSIONS.....a3

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APPENDIX A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

City of Chester, ... Respondent,

v.

Naomi Addison, et al., ... Appellants.

and

City of Chester, ... Respondent,

v.

Doug Allen,. . . . . Appellant.
(Two Cases)

Appeals From Chester County
George F. Coleman, Judge

Opinion No. 21594
Filed November 12, 1981

AFFIRMED

Glenn B. Manning, of Bennettsville, for appellants Naomi Addison, et al. Doug P. Allen, of Orangeburg, pro se.

Attorney General Daniel R. McLeod, Assistant Attorneys General Kay G. Crowe and Lindy P. Funkhouser and Staff Attorney Wayne G. Carter, Jr., all of Columbia; and Solicitor John R. Justice, of Chester, for respondent.

LEWIS, C.J.: The convictions of appellants, thirty-six in number, in Chester City Recorder's Court for parading without a permit were subsequently affirmed by the circuit court on appeal. We also affirm.

Thirty-five of the appellants were by agreement tried together in Recorder's Court, while appellant Allen was separately tried at his request. Two appeals were filed, one involving the trial of the thirty-five defendants and the other the trial of defendant Allen. Separate appeals were also filed in this Court from the order of the circuit court affirming the convictions. While separate appeals were filed, they have been combined for purposes of argument and both will be disposed of in this opinion.

The appellants were arrested in the City of Chester on November 11, 1979, for parading without a permit in violation of Chester City Ordinance Section 27-201, et seq. In pertinent part this parade ordinance requires application for a permit to be submitted to the Mayor or City Council setting forth certain information. Thereupon the Mayor or City Council "shall, in his or its discretion, issue a permit subject to the public convenience and public welfare." Section 27-202, Chester City Ordinance.

By means of pretrial motions, the appellants attacked this ordinance as unconstitutional on its face. They further alleged that their arrests were the consequence of a discriminatory denial of a permit, their subsequent arrests becoming thereby infringements upon constitutionally protected freedoms of speech and association.

The trial court correctly determined that the Chester City ordinance is virtually identical to the ordinance which this Court upheld against similar attack in Darlington v. Stanley, 239 S. C. 139, 122 S. E. 2d 207. In Darlington we held that the informational requirements of the ordinance harmonized with its aim of traffic regulation. We found that it was reasonable for authorities to seek to know the purpose of a march in order to anticipate any need for police protection. Finally, we held that the discretion granted to local authorities by such an ordinance was limited to the "safety, comfort and convenience of persons using the streets" and that local authorities could not under color of such an ordinance "act as censors of what is to be said or displayed in any parade." 239 S. C. 139, 147, 122 S. E. 2d 207.

The instant case is wholly unlike the situation presented in Shuttlesworth v. Birmingham, 394 U. S. 147, 89 S. Ct. 935, 22 L. Ed. 2d 162. There an ordinance which included broad language concerning "decency", "good order", and "morals", and which had

never before been construed by the State Supreme Court, was successfully attacked as unconstitutionally restraining the exercise of First Amendment freedoms without a narrow, objective and definite standard to guide official action. We hold, therefore, that the Chester City ordinance is constitutional on its face.

Appellants urge, however, that the ordinance was applied to them in a discriminatory manner. The record reveals that at the hearing the trial court received testimony and documents presenting sharply opposed views of the actions taken by Chester City Council leading to the instant arrests. The trial court found no discrimination, holding that the permit for November 11, 1979, was denied because of a previously scheduled Veterans' Day observance which would have conflicted with the proposed march by appellants. Strongly supporting this finding is the fact that parade permits were granted on at least three prior occasions to appellants through their representatives of the Southern Christian Leadership Conference and the Chester Movement for Justice, and one permit on December 1, 1979, which was subsequent to the denial of a permit to parade on the date in question.

We are called upon here to review the fact findings of a lower court made in response to motions preliminary to trial. As a general rule, appellate courts will be bound by such findings where there has been conflicting evidence or where the findings are supported by evidence and not clearly wrong or controlled by error of law. 5A C.J.S. Appeal and Error, Section 1643, p. 230. Such has been the practice of this Court. State v. Jones, 268 S. C. 227, 223 S. E. 2d 287. Our review of the instant appeals convinces us that the trial court correctly weighed the evidence before it, and that its finding of no discrimination is in accordance with our understanding of that term. Winter v. Pratt, 258 S. C. 397, 408, 189 S. E. 2d 7.

In addition to the foregoing, appellant Allen asserts that the trial court erred in a number of particulars. We find these exceptions to be without merit and the rulings of the trial court to have been in keeping with settled principles. These remaining exceptions are dismissed under our Rule 23.

Judgments affirmed.

LITTLEJOHN, NESS and HARWELL, JJ., concur. GREGORY, A.J., not participating.

APPENDIX B

STATE OF SOUTH CAROLINA COUNTY OF CHESTER	)	IN THE COURT OF GENERAL SESSIONS
City of Chester, Respondent, v. Naomi Addison, et al., Appellants.	)	ORDER DISMISSING APPEAL CASE NO. # 10311

STATEMENT OF THE CASE

This is an appeal from Appellants' arrest and conviction in the City Court of Chester, South Carolina, for violation of Chester City Code Ordinance Section 27-201, which provides as follows:

> It shall be unlawful for any person or organization to stage a parade or procession on any of the streets or in any other public places within the city without first having applied for and secured a special permit from the council to do so, excepting funeral processions, the armed forces of the U.S. Army or Navy, the military forces of this State and the force for the police and fire departments of the City.

Pre-trial motions on behalf of the defendants were heard by the Honorable Lamar H. Kelsey, III, City Recorder, on December 3, 1979. At that time the Court heard evidence and arguments presented by counsel for the Defendants, Glenn B. Manning, Esq., and counsel for the City of Chester, Lindy P. Funkhouser, Assistant Attorney General, and Wayne C. Carter, Staff Attorney, both of the Office of the South Carolina Attorney General. At that time counsel for the parties to this action agreed to have all thirty-five (35) defendants tried together. On December 6,

1979, the Chester City Recorder issued his Order denying the defendants' pre-trial motions to dismiss the charges. The case was called for trial on December 12, 1979, in Chester, South Carolina, with the Honorable Lamar H. Kelsey, III, City Recorder, presiding, and a jury. On December 13, 1979, the jury returned a verdict of guilty as to all defendants, and the trial judge sentenced each defendant to a fine of $100.00, plus $8.25 court costs or thirty (30) days in jail. Counsel for defendants served his Exceptions and Notice of Intention to Appeal on December 17, 1979. The Return of the Chester City Recorder was filed in the Office of the Clerk of Court for Chester County on February 21, 1980.

This matter was heard before me in chambers in the Chester County Courthouse, Chester, South Carolina, on April 11, 1980, at 10:00 a.m., after counsel for the parties hereto served and filed briefs in support of their respective positions. After a careful consideration of the Record, the briefs and the arguments of counsel on behalf of the parties hereto, this court hereby rules that the appeal should be denied and dismissed.

FACTS OF THE CASE

On three occasions prior to November 11, 1979, the Chester City Council had issued parade permits to Appellants, by and through their representatives of the Southern Christian Leadership Conference and the Chester Movement for Justice. (Tr. p. 37, line 24-p. 38, line 6). The record shows that annual Veteran's Day ceremonies were scheduled to take place at the Chester County Courthouse for November 11, 1979. (Tr. p. 35, lines 3-18). No permit had been issued for the Veteran's Day celebration inasmuch as it involved no parade or procession

through the streets of Chester. On November 6, 1979, Chester Mayor James T. Funderburk issued a statement criticizing one of the defendants in this case, Mr. Golden Frinks, declaring that "there will be no more permits issued where Golden Frinks or the communist party is allowed to be involved in any parades and so forth." (Tr. pp. 18-21). Some time thereafter, prior to November 10, 1979, Mr. Golden Frinks, Field Secretary for the Southern Christian Leadership Conference and the Chester Movement for Justice, issued an application for a permit pursuant to Chester City Code Section 27-202, to stage a parade on Sunday, November 11, in the afternoon, with active participation of 100 to 1,000 people. (Tr. p. 70). On November 10, 1979, the Chester City Council, composed of eight persons, met to consider the application for a parade permit and issued to Mr. Frinks, by and through the Chester City Mayor, a statement denying the application on the grounds that "an assembly of veterans and other citizens has previously been scheduled to be held at the Chester County Courthouse on November 11, 1979, to conduct traditional ceremonies in annual observance of Veteran's Day." (Tr. p. 35, lines 3-18) The City Council, in effect, ruled that the parade and the Veteran's Day ceremonies conflicted in time, place, and purpose. Nevertheless, the defendants did stage a parade or procession on November 11, 1979, at which time they were arrested on Pinckney Street in Chester, South Carolina. (Tr. p. 10, line 24-p. 14, line 1). The record does show that a parade permit was subsequently granted to the

Southern Christian Leadership Conference and the Chester Movement for Justice for December 1, 1979.

The Chester City Mayor had the following comment to make as to the force and effect of his statements to a local newspaper, shown in the Transcript at p. 69, as follows:

> Q. (By Mr. Funkhouser). Mayor Funderburk, are these statements in the paper, statements of yourself or statements of the City Council?
>
> A. They are my statements, the City Council had nothing to do with it.
>
> Q. Then you are not saying that the City Council ruled and denied their application because of what you had said in this statement?
>
> A. No. That's absurd. The City Council is composed of eight men and myself. The City Council, when they received the application from Golden Frinks, the City Council met and considered Mr. Frinks' application on its merit. (Tr. p. 34, line 23-p. 35, line 9).

The trial judge, who considered the testimony and evidence presented at the motion hearing, concluded that the City Council did not act with the purpose of denying the within defendants their constitutionally guaranteed freedom of speech and assembly, but, rather, "with a view 'to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travellers, and to minimize the risk of disorder.'" (Citation omitted). (Tr. p. 77).

CONCLUSIONS OF LAW

The Appellants have argued to this court several exceptions, each of which shall be discussed as follows:

I.

Appellants' claim that Chester City Code Ordinance Sections 27-201, 202, and 203 are facially invalid under Amendments 1 and 14 of the United States Constitution. (Exception 1).

It should be noted at the outset that the applicable provisions of the Chester City Code are substantially the same as those upheld in City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961). It may be reasonably inferred that the Chester Ordinances, adopted on January 8, 1962, were patterned after the statutes considered in City of Darlington. In that case, the Appellants made the same contentions as presented here, namely that:

> 1. The Chester Ordinance is unconstitutional in that it fixes no standard or guide for the granting or denial of a permit and leaves the matter to the uncontrolled will of the City Council.
>
> 2. The Appellants were deprived of their right to freedom of speech and assembly guaranteed by the Constitution of South Carolina and the right of freedom of speech and assembly guaranteed by the First Amendment to the Constitution of the United States.

The United States Supreme Court in Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 471 (1965), while acknowledging the rights of free speech and assembly, noted that such rights do not mean that "everyone with opinions or beliefs to express may address a group at any public place and at any time." The State has a duty to maintain the existence of an organized society and public order, "without which liberty itself would be lost in the excess of anarchy." In a similar vein, the South Carolina Supreme Court in City of Darlington, quoting Mr. Justice Jackson in Kunz v. People of the State of New York, 340 U.S. 290, 95 L.Ed. 280, stated that "cities throughout the country have adopted the permit requirement to control private activities on public streets and for other purposes." The Supreme Court of this State held that, although the rights of freedom of speech and assembly are fundamental, they are not in their nature absolute,

and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. The Court stated in City of Darlington that ordinances approved by City Councils are presumed to have a constitutional rather than unconstitutional purpose in mind. See Powell v. Thomas, 214 S.C. 376, 52 S.E.2d 782. The Court further held that such ordinances will not be declared unconstitutional if, by any reasonable construction, they can be harmonized with the State and Federal Constitutions. See Jones v. Prudential Insurance Company, 210 S.C. 264, 42 S.E.2d 331.

This Court holds, as found in City of Darlington, that the City of Chester ordinance was not designed to suppress in any manner freedom of speech or assembly, but to reasonably regulate the use of the streets in the public interest. It does not seek to control what may be said on the streets either by speech or by writing, and is applicable only to organized formations of persons using the streets and not to individuals or groups who are not engaged in a parade or procession. The City Council of Chester deemed the enactment necessary to preserve the health, welfare, and protection of the citizens of Chester, as well as to maintain law and order. The requirement of Section 27-202 that the applicant for a permit state the time of the proposed parade, the course to be travelled, the number of persons or vehicles involved and the purpose of such permit is to assist the municipal authorities in deciding whether or not the issuance of a permit is consistent with

traffic conditions at any particular time and place. The fact that such detailed information is required to be presented to the City Council negatives Appellants' claim that the power given to that body was to be exercised arbitrarily or for some capricious reason. All of the information required to be furnished is related to the proper regulation of the use of the streets. There is nothing suspect about requiring such information. City of Darlington v. Stanley, supra.

Likewise, there is no merit in the Appellants' claim that the ordinances are invalid because they fix no standard to be observed by the City Council in granting or withholding permits, thereby enabling that body to act arbitrarily. As held in City of Darlington,

> It is true that the general rule in this State, as elsewhere, is that a statute or ordinance which in effect reposes an absolute, unregulated, and undefined discretion in an administrative or public body will not be upheld. (Citations omitted). But, as stated in the Annotation in 92 ALR at page 410, an exception or qualification to this rule is frequently made 'where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a public regulation and is necessary to protect the public morals, health, safety and general welfare.' (Citations omitted). 239 S.C. at 147, 122 S.E.2d at 210.

The Court then went on to state that:

> Due to varying traffic conditions and the complex problems presented in maintaining an orderly flow of traffic over the streets and highways it clearly appears that it would be practically impossible to formulate in an ordinance a uniform plan or system relative to every conceivable parade or procession. The standard to be applied is obvious from the purpose of the ordinance. It would be of little or no value to state that the standard by which the City Council should be guided is the safety, comfort, and convenience of persons using the streets. That is already implicit in the ordinance, as we construe it. The members of the Council may not act as censors of what is to be said or displayed in any parade. If they should act arbitrarily, resort may be had to the Courts. 239 S.C. at 147, 122 S.E.2d at 211.

As to the use of the word "discretion" in the governing body, our Supreme Court held that

> we do not construe this as meaning unfettered discretion but one to be exercised in connection with the safety, public order and convenience in the use of the streets. This construction is fortified by the phrase...which states that the permit shall be issued 'subject to the public convenience and public welfare.' 239 S.C. at 148, 122 S.E.2d at 211.

On this point see also the case of State v. Cox, 91 N.H. 137, 16 A.2d 508, cited in City of Darlington v. Stanley, supra.

It is clear that the above-mentioned statutory construction is in accord with the Constitution of the United States. In Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed.2d 162 (1969), the United States Supreme Court held that municipal permit ordinances-upon which the respective State Supreme Courts have construed and defined the amount of discretion and standards

allowed under such ordinances would pass constitutional muster, so long as the construction of the ordinances occurred prior to an individual's violation of such permit ordinances. The Supreme Court of South Carolina has defined the limits of the discretion allowable to City Councils in the granting or denial of parade permits, and the corresponding standards which serve to guide Councilmen in the exercise of such discretion. Consequently, the Chester City Code Ordinances under attack pass constitutional muster. See also Cox v. New Hampshire, 312 U.S. 569, 85 L.Ed. 1049; Hague v. Committee for Industrial Organization, 307 U.S. 496, 83 L.Ed. 1423; Cox v. State of Louisiana, 379 U.S. 536, 13 L.Ed.2d 471 Therefore, this Court holds that Chester City Code Ordinance Section 27-201, 202, and 203 are facially valid under the Constitution of the United States.

II.

Appellants' claim that Chester City Code Ordinance Section 27-201 and 202 were unconstitutionally applied to their parade or procession. (Exception 2).

On this issue it should be noted that the opinions of City of Florence v. George, 241 S.C. 77, 127 S.E.2d 210 (1962) and City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961) enunciated the implicit standards of discretion to be utilized by municipal governing bodies in the granting or denial of parade permits, and it is clear that such standards comport with the Constitution of the United States. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed.2d 162 (1969); Cox v. Louisiana, 379 U.S. 536, 13 L.Ed.2d 471 (1965).

Whether or not these statutes were applied in a constitutional manner is dependent upon the facts of the instant case. Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 222 (1972); Shuttlesworth v. City of Birmingham, supra; Gregory v. Chicago, 394 U.S. 111, 22 L.Ed.2d 134 (1968). Collin v. Smith, 578 F.2d 1197 (1978). Jackson v. Dobbs, 329 F.Supp. 287 (1970). In this connection, the language of Cox v. State of New Hampshire, 312 U.S. 569, 85 L.Ed. 1049, must be remembered:

> Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection.

In this case, the Chester City Council, pursuant to its ordinances, had granted three previous merits. The one time in which the marchers' application for a permit was denied was on November 10, 1979, due to a previously planned assemblage of Chester citizens who were celebrating Veteran's Day, an annual event for Chester County. The lower court found that the defendants' application for a permit was denied because the march was to end at the Chester County Courthouse on November 11, 1979, and the Veteran's Day activities were likewise scheduled. This clearly is not a discriminatory application of the ordinance by the City Council. As the aforementioned language of Cox v. New Hampshire, supra, states, in any other circumstances the Chester marchers may have been entitled to a permit, but with respect to the day of November 11, 1979, their First Amendment rights were in conflict with those who wished to attend the annual Veteran's Day celebration. There can be little doubt that such a conflict would be a legitimate reason for denying an application

for a permit in the interest of the public welfare. Cox v. New Hampshire, supra.

The City Council of Chester, in making its decision on this matter, did so based upon the criteria enumerated in Section 27-202 of the City Code, in the constitutionally approved language of the City of Darlington v. Stanley, supra, set out herein as follows:

> Such application shall contain the following information:
>
> (1) The time of such proposed parade or procession,
>
> (2) The streets to be used,
>
> (3) The number of persons or vehicles to be engaged, and
>
> (4) The purpose of such parade or procession.
>
> Upon receipt of such application, the Mayor or Council shall, in his or its discretion, issue a permit subject to the public convenience and public welfare.

Based upon such criteria, the Council found a conflict with the Veteran's Day celebration with respect to location, time, and purpose inasmuch as the record shows that the Chester marchers had no intention of celebrating Veteran's Day with the rest of those assembled for such purpose, but, rather, they had intended on focusing on "public injustices" (Tr. p. 70). The City Council's decision was applied constitutionally inasmuch as it observed the standards implicit in the ordinance when it issued its reasons for denying the application. City of Darlington, supra.

Counsel for Appellants relies heavily upon the statement of Chester Mayor James T. Funkerburk as evidence of discrimination or arbitrary use of authority to deny the application. However, it is the opinion of this Court that whatever the Mayor's personal comments-as he testified they were-such were not binding upon the City Council, it should be emphasized that parade permits

under Chester City Code Section 27-201 must be obtained from the Council, not from the Mayor. To rule that the Mayor's statement, ipso facto, give rise to a finding of arbitrary and unlawful discrimination against these Appellants would be to hold, in its authority to legitimately refuse the issuance of permits when such action may be required in the interest of "the public convenience and public welfare." See City of Darlington v. Stanley, supra. The legitimate exercise of authority by a governing body is not so easily torn asunder.

Counsel for Appellants, however, asserts that Shuttlesworth v. City of Birmingham, supra, is dispositive of this case. However, this Court rules that the facts and result in Shuttlesworth are clearly distinguishable in the following particulars:

> (1) The ordinance ruled upon in Shuttlesworth had been one enacted by the City of Birmingham, and was broad in its scope, in attempting to regulate matters which had nothing to do with highway regulation or public welfare, but rather, attempted to regulate 'public morals, decency, and health.'
>
> (2) The Birmingham ordinance provided no criteria to guide a city commission in its determination of what violated the 'public welfare, peace, safety, health, decency, good order, morals or convenience.' The Alabama Supreme Court had not interpreted the ordinance until four years after the arrest.
>
> (3) The Birmingham ordinance encompassed every type of human conduct conceivable, and appeared to emphasize the regulation of human activity, as opposed to providing access of the public to the public streets.

(4) The United States Supreme Court focused upon the aforementioned language of the ordinance and concluded that it was overbroad and vague, in that there was no limit to the discretion of the City Commission. The Court further noted that at the time of the arrest there had not been given to the ordinance a constitutional construction by the Alabama Supreme Court.

(5) The United States Supreme Court found that the later constitutional construction by the Alabama Supreme Court was not sufficient assurance that the City of Birmingham would follow the statutory construction.

(6) Under the ordinance of the City of Birmingham, the Commission itself publicly declared that no permit would be issued to the marchers, and threatened the marchers with imprisonment. In this case the Mayor was expressing his personal opinion, and was not a voting member of the City Council.

(7) The marchers in Chester had been issued three prior parade permits to march by the City Council whereas the marchers in Shuttlesworth had not been issued a single permit.

(8) Unlike the factual consideration in Shuttlesworth, the parade permit in the Chester case was denied due to a conflict of location, time, and purpose with a pre-planned Veteran's Day celebration. There was no such conflict of assemblage in the Shuttlesworth case; indeed, there wasn't any other assembly going on at the time of the parade.

(9) The City Council's denial of the permit on November 10 was the first time a permit had been denied by the Council, and there is evidence in the record to show that subsequent applications were granted.

This Court holds, therefore, that the Chester City Code Ordinance Sections 27-201, 202, and 203, as applied to Appellants comported with the test enunciated in Shuttlesworth:

> Whether control of the use of the streets for a parade or procession was, in fact, exerted so as not to deny or unwarrantedly abridge the right of assembly in the opportunities for the communication of thought in the discussion of public questions immemorially associated with resort to public places.

III.

Appellants' claim of error as to admission of the application into evidence. (Exception 5).

The next issue argued before this Court by Appellants was the alleged error of the trial judge in admitting a copy of the application for permit which had been submitted on their behalf. They claim that it was error for the trial judge to admit into evidence a copy of the document, instead of the original. This Court finds, however, that any alleged error was not prejudicial inasmuch as there was ample other testimony in the record to show that an application had been submitted for a permit to parade in the streets of Chester. Therefore, it was merely cumulative to other competent evidence. State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978). In this regard, the Court also takes note of the fact that the evidence complained of demonstrates that Appellants complied with the formal requirements of Chester City Code Ordinance Section 27-202, and, therefore, is favorable to their position. An alleged error which is favorable to a defendant cannot cause such prejudice as would warrant a new trial. State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977). State v. Watkins, 262 S.C. 178, 203 S.E.2d 429, App.Dism'd. 418 U.S. 911, 41 L.Ed.2d 1157, 94 S.Ct. 3204 (1974). Appellant has demonstrated no prejudice to his rights arising from the fact that the document was a copy of an original.

IV.

Appellants' claim as to the alleged erroneous admission of the City Council's statement of reasons for denying the permit. (Exception 7).

The next issue argued before this Court is whether the lower court erred in admitting the City Council's statement of reasons for denying Appellants a permit to parade in the city streets of Chester. Of course, this evidence had a direct bearing on the central issues of the case, i.e., whether the City Council exercised its authority over this matter in a legitimate manner. The fact that the document was an original, instead of a copy, merely goes to its weight, not to its admissibility and this Court rules that the trial judge did not abuse his broad discretion in this matter. State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977); State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977), cert.den. 434 U.S. 894.

This Court takes notice that the ensuing questions of law were not argued by Appellants in their brief, nor were they argued at the hearing on this matter, and therefore may be subject to waiver under normal rules of appellate procedure. Cf. 7A West's S.C. Digest, Criminal Law, Key No 1178.

V.

Appellants' claim that the trial judge committed error by refusing to hear argument and ruling that a thirty day waiting period was constitutional in this case. (Exception 3).

It appears that on this exception Appellants argue that the Chester City Council unconstitutionally adopted an amendment to Chester City Ordinance Sections 27-201, 27-202, and 27-203 providing for a thirty day waiting period prior to issuance of a parade permit. The lower court found, and Appellants have not demonstrated otherwise, that the City Ordinances contained no

such amendment at the time Appellants' application for a parade permit was considered in this case. Therefore, this Court finds that the City Recorder did not abuse his discretion in ruling that the amendment had no relevance to the issues presented at trial. State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977); State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977), cert.den. 434 U.S. 894.

VI.

Appellants' claim that the trial judge refused to allow them to present testimony in support of their motions to declare the City Ordinance unconstitutional (Exception 4).

On examination of this Record, this Court finds that the City Recorder gave Appellants every opportunity to make an offer of proof as to the testimony which they intended to present in support of their motions. If Appellants had felt that they were entitled to any additional testimony than that presented below, they should have placed into the record facts to be elicited from potential witnesses so as to preserve their Record for appeal. There appears to be no abuse of discretion on the part of the trial judge from this Transcript. State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977).

VII.

Appellants' claim that the trial judge committed error by considering a document not admitted into evidence. (Exception 6).

This Record does not indicate that the City Recorder based his decision upon anything other than evidence presented before him by the parties. Therefore, this exception is dismissed for lack of factual support in the Record. State v. Rouse, 262 S.C. 581, 206 S.E.2d 872 (1974).

VIII.

Appellants' claim that the trial judge committed error because the law does not support his ruling. (Exception 3).

This exception is dismissed inasmuch as it merely restates issues presented in his other Exceptions. Therefore, it leaves nothing for this Court to consider. State v. Campbell, 259 S.C. 339, 191 S.E.2d 770 (1972).

IT IS THE OPINION of the Court, for the reasons stated above, that the within appeal should be denied and dismised. It is, therefore,

ORDERED, that Appellants' Exceptions be, and the same hereby are, dismissed.

AND IT IS SO ORDERED.

George F. Coleman
Judge, Sixth Judicial Circuit

Winnsboro, South Carolina.
21 day of June, 1980

CERTIFICATE OF SERVICE

THIS CERTIFIES THAT A TRUE COPY OF THE WITHIN ORDER HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING THE SAME IN A PROPERLY ADDRESSED ENVELOPE PROPERLY STAMPED AND ADDRESSED THIS 21st DAY OF June, 1980.

ATTORNEY FOR Plaintiff

SWORN TO BEFORE ME THIS 21st DAY OF June, 1980.

Notary Public for South Carolina
My Commission Expires 11/16/80

APPENDIX C

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN RECORDER'S COURT

The City of Chester,)
vs)
Addison, et al.)

ORDER

This matter came on before me on December 3, 1979, on motion of Glenn B. Manning, attorney for Defendants, to set aside or dismiss the charges against Defendants upon the grounds that the City of Chester Ordinance 27-201,202, and 203 is unconstitutional on its face and as applied in this particular case. Mr. Manning also challenged the ordinance as unconstitutional because of the thirty (30) day waiting period. After hearing arguments of counsel and receiving testimony and evidence on the application of the ordinance in this case I conclude and rule as follows:

I

City of Chester Ordinance 27-201,202, and 203 is not invalid on its face. This ordinance appears to be materially identical to the ordinance upheld by our Supreme Court against constitutional challenge in City of Darlington vs Stanley 239 S.C. 139 122 S.E. 2nd 207 (1961)

II

City of Chester Ordinance 27-201,202, and 203 is not unconstitutional as applied in this case. While there is evidence before the Court that the Mayor of the City of Chester made statements in opposition to members of a group making application to stage a parade or march, this Court cannot conclude that the City Council, in denying the permit required by the ordinance, acted with the purpose of denying the applicants their constitutionally guaranteed freedom of speech and assembly, rather than with a view "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder." City of Darlington vs Stanley, supra, at 211. It appears that the City Council had knowledge of another assemblage in the path of the proposed march by the applicants. Although the rights of freedom of speech and assembly are fundamental, "they are not in their nature absolute and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order." City of Darlington vs Stanley, supra, at 209.

III

It appears to this Court that at the time the applicants in this case were denied a permit to stage a march or parade by the City Council of the City of Chester, City of Chester Ordinance 27-201,202, and 203 contained no requirement for a thirty (30) day waiting period. It does not appear that the application for a permit in this case was affected by such a requirement. Therefore, this Court refuses to pass upon any such amendment to the ordinance. Even so, such a requirement seems reasonable, and "when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application." City of Darlington vs Stanley, at 211.

AND IT IS SO ORDERED.

[illegible]
EDGAR H. DEASLY, III
CITY RECORDER

December 6, 1979
Chester, S. C.

APPENDIX D

THE STATE OF SOUTH CAROLINA

In The Supreme Court

NAOMI ADDISON, ET. AL.,	)	
	)	
Appellants,	)	
	)	
v.	)	No. 21594
	)	
CITY OF CHESTER,	)	
	)	
Respondent.	)	
	)	

NOTICE OF APPEAL

Notice is hereby given that Naomi Addison, et. al., defendants above named, hereby appeals to the United States Supreme Court from the final judgment affirming the convictions of defendants for marching (parading) without a permit, enterned in this action on the 12th day of November, 1981.

Robert Hayden
Attorney For Appellants

1324 N. Capitol Street, N.W.
Washington, D.C. 20002
Phone No. 202/797-8106

FILED
2-10-82

...Councilmen
...Walter M. Bridges
...William A. Cranford
...Seyward M. Doster
...Jesse W. Grant
...J. F. Pope
...L. H. Robbins
...Richard Stevens

APPENDIX E

CITY OF CHESTER

CHESTER, S. C. 29706

November 10, 1979

TO: Mr. Golden Frinks,
Field Secretary
SCLC

Your application for a permit to hold a parade in the City of Chester on Sunday, November 11, 1979 on a route designated in your application is denied.

An assembly of Veterans and other citizens has previously been scheduled to be held at the Chester County Courthouse on November 11, 1979, to conduct traditional ceremonies in annual observance of Veterans Day. The route of the parade proposed in your application would terminate at the same location at approximately the same time and a disruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community.

To protect the public welfare in the City of Chester and to avoid the present danger to life, liberty and property, your application to conduct a parade in Chester under the circumstances now existing which have produced a volatile atmosphere in this city, is denied.

Sincerely yours,

James T. Funderburk

James T. Funderburk
Mayor of Chester

EVENING
Our 102nd year
Tuesday, Nov. 6, 1979

'Enough'

Chester mayor blasts Frinks

Following is a statement issued today by Chester Mayor James T. Funderburk:

"Dear Chester citizens and news media:

Recently, as published in your newspaper, the citizens of Chester County, all races, and the county as such, have been the target of malicious and false accusations.

Funderburk

The death of 18-year-old Mickey McClinton saddened people in this area. People were concerned when rumors flew that he may have been murdered. The charges which resulted in the exhuming of his body were inspired by a contemptible outsider who has since admitted he knew the charges were false.

This makes his message in Chester clear. He does not seek truth and justice, he seeks division and hate. What disturbs us is that the mortician made no public statement until after he had accompanied the accuser to the high office of governor of South Carolina, claiming foul play of the worst kind.

Frinks and his SCLC were greeted with dignity, accorded a respective hearing, and given full cooperation all the way to the governor's office. Now it is clear that Frinks didn't want the truth when even after the second autopsy proved what the mortician, sheriff, and coroner knew, that the body bore no evidence of castration, gunshot wounds or rope burns and so forth. Frinks continued to talk of castration even after he was convinced it was not the truth. The more he talked, the thinner became the ice on which he stood.

Chester has the finest people in all the world, and our people consider it outrageous that Communist Party people were in our city this past Saturday. We have had enough. If our Chester citizens want to march, then the Chester City Council will consider their request for a permit, but there will be no more permits issued where Golden Frinks or the Communist Party is allowed to be involved in any parades and so forth.

The good name of Chester has been tarnished and slandered by the outsiders who participated in this despicable defamation. The NAACP, on the other hand, is to be praised for its integrity of position, having the courage to stand for what was obvious and right. One of the participants has now had the courage to say he was wrong, and he joins with me in ostracizing communism or anything connected with the Communist Party in our city.

Ninety percent or more of all races in Chester deplore this series of events and the adverse publicity given our community. We are proud of our race relations, enjoy mutual respect across racial lines, and have had no racial problems of consequence, until the lies were told and the publicity-getting activites were set in motion. In retrospect, was South Carolina not also hurt; and how much did this cost South Carolina?

Young McClinton's death was unfortunate. It was a hit-and-run death and criminal. We intend to assist in every way we can to investigate the automobile death. The perpetrators should be brought to justice.

It is our hope and prayer that this statement will be the end of outsiders interferring in Chester and that we in Chester will truly live by the Golden Rule "doing unto others as we would have them do unto us."

TO: THE MAYOR AND CITY MANAGER OF CHESTER, SOUTH CAROLINA

FROM: FIELD SECRETARY, GOLDEN FRINKS, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND THE CHESTER MOVEMENT FOR JUSTICE

SUBJECT: APPLICATION FOR PERMIT PURSUANT TO CHESTER CITY CODE #27-202.

Your attention is invited to our application and request for a permit to stage a parade Sunday November 11, 1979. The parade is to begin on Liberty Road coming onto Highway #9 proceeding to Pinckney Street thence to Center Street to the top of the hill turning onto Main Street proceeding to the courthouse.

Time for beginning of the parade is 3:00 P. M. and the number of participants will range from 100-1,000.

There wil be five vehicles involved and one public address system.

The purpose of the parade is to invite attention to public injustices.

Golden Frinks, Field Secretary

R.H.
336-5141
or 377-1144
Ext 223

No. 81-6202

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

RECEIVED
FEB 9 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Naomi Addison, et al.,)
)
Appellants,)
)
v.)
)
City of Chester,)
)
Appellees.)

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Come now Appellants by and through their counsel and respectfully move the Supreme Court to grant Appellants leave to proceed with this appeal in forma pauperis, pursuant to Supreme Court Rule 46. The facts showing that this request comes within the statutory requirements are more fully set forth in Appellants' affidavits filed herewith in accordance with the form prescribed.

Appellants do not have the funds necessary to bring this appeal if they are required to pay costs or give security therefor. If Appellants are not allowed to proceed without paying the costs of this appeal their constitutional rights will be denied without consideration by this court of last resort, or any Federal court.

Leave to proceed in forma pauperis was not sought in any court below.

In connection with this Motion Appellants also request the relief provided under Supreme Court Rule 46.7.

This appeal is not frivolous or malicious, and it bears directly on the interest of the general public in the rights to free expression, assembly, and petitioning of government for redress of grievances guaranteed by the First Amendment of the United States Constitution.

Affiants believe they are entitled to redress.

Respectfully submitted,

Robert Hager

Robert Hager
Counsel of Record
Daniel P. Sheehan
John Clewett

Christic Institute
1324 North Capitol Street
Washington, D.C. 20002
(202) 797-8106

Mel Gibbs, Of Counsel

Dated: February 9, 1982

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,	)
	)
Petitioners,	)
	)
vs.	)
	)
CITY OF CHESTER,	)
	)
Respondents.	)
	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Naomi D. Addison being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? Yes

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. $300.00 per Month

Chester Sportswear
72-Pass
Chester S.C. 29706

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

James Wilcox
Ella Vontag Addison

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Karen D. Addison

Subscribed and Sworn To before me this 3rd day of January, 1982.

E. E. Ewing
Circuit Judge

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____
Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,

vs.

CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Martha W. Craig being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? no

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. $120.00 month [redacted] Oct.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. $58.00

3. Do you own any cash or checking or savings account? no

   a. If the answer is yes, state the total value of the items owned. no

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

   a. If the answer is yes, describe the property and state its approximate value. no

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Brother - Dorothy A. Davis

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Martha W. Craig

Subscribed and Sworn To before me this 3rd day of

[illegible], 1982.

[illegible]
[illegible], S. C. 2970[illegible]

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,

vs.

CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Lois Cunningham being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Ricky Cunningham
Karen Cunningham } sons
Corey Cunningham

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Ricky Cunningham

Subscribed and Sworn To before me this 3rd day of January, 1982.

C. C. Thompson
Notary Public, S. C.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,
vs.
CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Viola Brown Johnson being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

1-6-82 $508.00

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Elliott H. Poag

Husband

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Viola Cunningham

Subscribed and Sworn To before me this 3rd day of

January, 1982.

G. C. King

Clerk, S. C. 29716

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,
vs.
CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Alma Addison being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

June 1981

$ 700.00

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Two daughters
Kimberly Franklin 5 years old
Shamai Franklin 1 month old

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Carrie Franklin

Subscribed and Sworn To before me this 3rd day of June, 1982.

R. E. Kelly
Clinton S.C. 29325

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,
vs.
CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Willie Mae Gregory being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? Yes

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

$442.00
Chester Jr. High
Caldwell St.
Chester, S.C. 29706

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Charles Bowles — Daryl Bowles
David Gregory — Darell Gregory
Gabriel Gregory — Samantha Gregory
Children

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Willie Mae Gregory

Subscribed and Sworn To before me this 3rd day of January, 1982.

T. C. King
Chester, S.C. 29706

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,	)
	)
Petitioners,	)
	)
vs.	)
	)
CITY OF CHESTER,	)
	)
Respondents.	)
	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Elmira Kearse being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? no

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

Aug. 1981
$600.00

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

Automobile $600.00

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Wife Lillie Mae Keaner Donald Keaner

Children Elaine Keaner
Lenard Keaner
Elmore Keaner Jr.
Donald Keaner

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Elmer Keaner

Subscribed and Sworn To before me this 2nd day of January, 1982.

C. T. Kelly
Tabor City, N. C. 28463

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,	)
	)
Petitioners,	)
	)
vs.	)
	)
CITY OF CHESTER,	)
	)
Respondents.	)
	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Betty Killian being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Betty Killian

Subscribed and Sworn To before me this 3rd day of January, 1982.

T. C. King
Notary Public, S.C. 29706

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,	)
	)
Petitioners,	)
	)
vs.	)
	)
CITY OF CHESTER,	)
	)
Respondents.	)
	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Leroy Rendeymes Jr. being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No.

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

5. List the persons who are dependent upon you for none support and state your relationship to those persons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Leroy Rendleman Jr

Subscribed and Sworn To before me this 3rd day of January, 1982.

E. E. King
Tekulu, N.C. 27310

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,)
)
Petitioners,)
)
vs.)
)
CITY OF CHESTER,)
)
Respondents.)
)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Annie L. Peterson being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

Sept. 1981

$552.00

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? yes

a. If the answer is yes, state the total value of the items owned. $1.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

Land 1.30 acres

$1000.00

5. List the persons who are dependent upon you for support and state your relationship to those persons. none

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Annie L Peterson

Subscribed and Sworn To before me this 2nd day of February, 1982.

G. G. Kay
Circuit Clerk

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,

vs.

CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, Rev D. L. Stapleton being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? YES

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

HOME TOWN HEATING A.C. Conditioning
105 LANCASTER. ST. CHESTER S.C. 29706
Paid PER MO. ON AVERAGE $180.00

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value. NO

5. List the persons who are dependent upon you for support and state your relationship to those persons.

KENDRICK L. STRINGFELLOW
DERRICK F. STRINGFELLOW
KEVIN L. STRINGFELLOW
My Sons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Rev. S. L. Stringfellow

Subscribed and Sworn To before me this 3rd day of February, 1982.

C. C. Mungo
Pelzer, S. C.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,
Petitioners,
vs.
CITY OF CHESTER,
Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, REV. Bill STRINGFELLOW JR. being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

ST LUKE BAPTIST CHURCH
WINNSBORO, S.C. $600.00 MONTH

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? No.

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, No. automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

WANDA BILLIETTA DAUGHTER & WIFE RESPECTIVELY

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Dee Brie Thompson

Subscribed and Sworn To before me this 3rd day of January, 1982.

T. C. Ring
Chesterfield, S.C. 29706

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Supreme Court Justice

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1981

No.

NAOMI ADDISON, Et. Al.,	)
	)
Petitioners,	)
	)
vs.	)
	)
CITY OF CHESTER,	)
	)
Respondents.	)
	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED
ON APPEAL IN FORMA PAUPERIS

I, Cruella E. Woods being first duly sworn, depose and say that I am one of the Petitioners, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are fully set forth in the jurisdictional statement.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? no

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. 11/4/81
3.96 per hr. Hrs varied from 18 to 30 per week

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? no

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?
no

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? no

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Pamela K. Woods daughter
Stephan Jr Woods son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Carla E. Woods

Subscribed and Sworn To before me this 3rd day of February, 1982.

E. C. King
Clerk, S. C.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____

Supreme Court Justice

Motion to Dismiss or Affirm

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 81-6202

NAOMI ADDISON, ET AL., Appellants,

versus

CITY OF CHESTER, Respondent.

MOTION TO DISMISS

DANIEL R. McLEOD
Attorney General

BRIAN P. GIBBES
Senior Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEYS FOR RESPONDENT.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF Motion to Dismiss HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING 1 COPIES IN AN ENVELOPE PROPERLY ADDRESSED WITH POSTAGE PREPAID THIS 16th DAY OF April, 1982

Brian P. Gibbes
ATTORNEY FOR Respondent

SWORN TO BEFORE ME THIS 16th DAY OF April, 1982

Karen Y. Newton (L.S.)
Notary Public for South Carolina

My Commission Expires 9-17-86.

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ATTORNEYS FOR RESPONDENT.

QUESTIONS INVOLVED

I.

Does Section 27-201, et seq., of the Chester City Code Ordinance give the Mayor or the City Council unbridled discretion to issue or refuse to issue parade permits?

II.

Was Section 27-201, et seq., of the Chester City Code Ordinance constitutionally applied to the Chester marchers?

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versus

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MOTION TO DISMISS

OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Opinion No. 21594, filed November 12, 1981, as reporduced in Appellants' Motion as Appendix A, at page a1.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTIONS INVOLVED

I.

Does Section 27-201, et seq., of the Chester City Code Ordinance give the Mayor or the City Council unbridled discretion to issue or refuse to issue parade permits?

II.

Was Section 27-201, et seq., of the Chester City Code Ordinance constitutionally applied to the Chester marchers?

ARGUMENT

I.

Section 27-201, et. seq., of the Chester City Code Ordinance is constitutional upon its face and does not give the Mayor or the City Council unbridled discretion to issue or refuse to issue parade permits.

It is submitted by the attorneys for the City of Chester, South Carolina that Chester City Code Ordinance Section 27-201, et. seq., is constitutional upon its face. That Ordinance provides, in pertinent part:

> §27-201 Permit Required To Stage Parade; Exceptions
>
> It shall be unlawful for any person or organization to stage a parade or procession on any of the streets or in any other public places within the City without first having applied for and secured a special permit from the Council to do so, excepting funeral processions, the armed forces of the U.S. Army or Navy, the military forces of this State and the force of the police and fire departments of the city.
>
> §27-202 Application For Permit; Issuance of Permit
>
> Such application shall contain the following information:
>
> (1) The time of such proposed parade or procession;
> (2) The streets to be used;
> (3) The number of persons or vehicles to be engaged; and,
> (4) The purpose of such parade or procession.
>
> Upon receipt of such application, the Mayor or Council shall, in his or its discretion, issue a permit subject to the public convenience and public welfare.

In the opinion rendered by the Supreme Court of South Carolina in the case of City of Darlington v. Stanley, 239 S.C. 139, 122 S.E. 2d 207 (1961), the Court held that a municipal

ordinance which prohibited the staging of a parade or a procession on the streets without a permit was not unconstitutional on the ground that it denied guarantees of freedom of assembly and speech or that it failed to set definite standards. It must be noted that the language of the municipal ordinance in that case is the foundation upon which the Chester City Code Ordinance was drafted. The City of Darlington opinion was rendered in 1961, and the Chester City Council adopted the constitutional ordinance of that case at a later period of time - January 8, 1962. Thus it is evident that the City of Chester acted in good faith and due diligence in its regulation of the use of the public streets by citizens of the City of Chester, taking care to provide a method of access to the public streets by city residents.

In the case of City of Darlington v. Stanley, supra., the appellants made the same contentions as the defense makes in the present case, namely that:

1. The Chester ordinance is unconstitutional in that it fixes no standard or guide for the granting or denial of a permit and leaves the matter to the uncontrolled will of the City Council.
2. The Appellants were deprived of their right to freedom of speech and assembly guaranteed by the Constitution of South Carolina and the right of freedom of speech and assembly guaranteed by the First Amendment to the Constitution of the United States.

The United States Supreme Court in Cox v. Louisiana, 379

U.S. 536, 13 L.Ed. 471 (1965), while acknowledging the rights of free speech and assembly, noted that such rights do not mean that "everyone with opinions or beliefs to express may address a group at any public place and at any time." The State has a duty to maintain the existence of an organized society and public order, "without which liberty itself would be lost in the excess of anarchy." This principle was enunciated in the additional opinions of Walker v. City of Birmingham, 388 U.S. 307, 18 L.Ed. 2d 1210, 1217 (1967); Adderly v. Florida, 385 U.S. 39, 17 L.Ed. 2d 149 (1966); Cox v. New Hampshire, 312 U.S. 569, 85 L.Ed. 1049 (1941); and Hague v. Committee for Industrial Organization, 307 U.S. 496, 516 (1939).

The South Carolina Supreme Court in City of Darlington, quoting Mr. Justice Jackson in Kunz v. People of the State of New York, 340 U.S. 290, 95 L.Ed. 280 (1951), stated that "cities throughout the country have adopted the permit requirement to control private activities on public streets and for other purposes." The South Carolina Supreme Court held that although the rights of freedom of speech and assembly are fundamental, they are not in their nature absolute and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order.

In Poulos v. State of New Hampshire, 345 U.S. 395, 97 L.Ed. 1105 (1953), the Court said:

> The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a non sequitur to say that First Amendment rights may

> not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary. It has indicated approval of reasonable nondiscriminatory regulation by governmental authority that preserves peace, order and tranquility without deprivation of the First Amendment guarantees of free speech, press and the exercise of religion.

The Supreme Court in City of Darlington, stated that ordinances approved by City Council are presumed to have a constitutional rather than an unconstitutional purpose in mind. Powell v. Thomas, 214 S.C. 376, 52 S.E. 2d 782 (1949). The Court further held that such ordinances will not be declared unconstitutional if by any reasonable construction, it can be harmonized with the State and Federal Constitutions. Jones v. Prudential Insurance Co., 210 S.C. 264, 42 S.E. 2d 331 (1947); Byrd v. Lawrimore, 212 S.C. 281, 47 S.E. 2d 728 (1947).

As the Court found in the City of Darlington case, it is submitted by the State that the City of Chester Ordinance was not designed to suppress in any manner freedom of speech or assembly but rather, it was designed to reasonably regulate the use of the streets in the public interest. The Ordinance did not seek to control what may be said on the streets either by speech or by writing, and it was applicable only to organized formations of persons using the streets and not to individuals or groups who are not engaged in a parade or procession. The City Council of Chester deemed the enactment necessary to preserve the health, welfare and protection of the citizens of Chester, as well as to maintain law and order. The Chester City Ordinance is within the purview of the following language from

the City of Darlington case:

> The requirement that the applicant for a permit state the time of the proposed parade, the course to be traveled, the number of persons or vehicles involved and the purpose of such parade is to assist the municipal authorities in deciding whether or not the issuance of a permit is consistent with traffic conditions at any particular time and place. The fact that such detailed information is required to be presented to the City Council negatives appellant's claim that the power given to that body was to be exercised arbitrarily or for some capricious reason of its own. All of the information required to be furnished is related to the proper regulation of the use of the streets.

The Appellants might argue that the purpose of the parade is wholly immaterial and the fact that this information is required indicates an intent to permit the municipality to act capriciously and arbitrarily. The Supreme Court rejected such arguments in the City of Darlington opinion:

> The decisions disclose that a number of ordinances and statutes contain such a requirement. It is not unreasonable. The purpose of the parade may have a bearing on the precautions which should be taken by the police authorities for the protection of those engaged in the parade and the general public.

The State also submits that there is no merit in the Appellant's claim that the ordinance is invalid because it fixes no standard to be observed by the City Council in granting or withholding permits, thereby enabling that body to act arbitrarily and deny a permit to those having social, political or other views with which it might disagree. As the Court held in City of Darlington:

> It is true that the general rule in this State, as elsewhere, is that a statute or ordinance which in effect reposes an absolute, unregulated, and undefined discretion in an administrative or public body will not be upheld. Henderson v.

> City of Greenwood, 172 S.C. 16, 172 S.E. 689; Schloss Poster Advertising Co. v. City of Rock Hill, 190 S.C. 92, 2 S.E. 2d 392; South Carolina State Highway Department v. Harbin, 226 S.C. 585, 86 S.E. 2d 466. But as stated in the annotation in 92 A.L.R. at page 410, an exception or qualification to this rule is frequently made 'where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare.' See 25 Am.Jur., p. 552; Cole v. Manning, 125 S.E. 2d 621.

In applying the qualification to the general rule to the Ordinance in question, the Supreme Court in City of Darlington held:

> Due to varying traffic conditions and the complex problems presented in maintaining an orderly flow of traffic over the streets and highways it clearly appears that it would be practically impossible to formulate in an ordinance a uniform plan or system relative to every conceivable parade or procession. The standard to be applied is obvious from the purpose of the ordinance. It would be of little or no value to state that the standard by which the City Council should be guided is the safety, comfort, and convenience of persons using the streets. That is already implicit in the ordinance, as we construe it. The members of the Council may not act as censors of what is to be said or displayed in any parade. If they should act arbitrarily, resort may be had to the courts.

The Supreme Court also construed the use of the word "discretion" in Section 2 of the Ordinance in City of Darlington, and held:

> But we do not construe this as meaning unfettered discretion but one to be exercised in connection with the safety, public order and convenience in the use of the streets. This construction is fortified by the phrase in Section 2 immediately following which states that the permit shall be issued subject to the public convenience and public welfare.

This opinion of the State Supreme Court is fully sustained by the opinion of State v. Cox, 91 N.H. 137, 16 A. 2d 508, 514,

cited by the South Carolina Supreme Court within the City of Darlington case. The Court there was called to pass upon the constitutionality of a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities. The statute was similar to those of the City of Darlington case, and of the case at bar. The defendants ignored the statute and engaged in a parade without the required license or permit. They contended that the statute was invalid under the Fourteenth Amendment in that it deprived them of their rights of freedom of worship, freedom of speech and press, and freedom of assembly, vested unreasonable and unlimited artibrary and discriminatory powers in the licensing authority, and was vague and indefinite. All of these contentions were overruled and the statute sustained. The Court pointed out that the application for a permit gave the public authorities notice in advance so as to afford opportunity for proper policing, and further observed that in fixing time and place, the license served "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder." In answering the contention that the act was invalid as vesting in the local authorities uncontrolled discretion, the Court said:

> This act is implicit in its requirement that the licensing authority act reasonably in granting or denying licenses, and with reference to the object of public order on the public ways. If it does not in express terms 'make comfort or convenience in the use of the streets...the standard of official action.' (Hague v. Committee for Industrial Organization, 307 U.S. 496, 83 L.Ed. 1923), the necessary inference is that it does based upon the presumption

> in favor of the validity of legislation as re-enforced by the express provision of the act bestowing 'delegated powers' upon the authority, as a grant intended to be only of due legislative power which may be properly delegated. The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has, and the legislature attempted to delegate no power it did not possess.

In an opinion by Chief Justice Hughes, the United States Supreme Court unanimously held that the statute, as construed by the Supreme Court of New Hampshire, violated no Federal constitutional rights of defendants, Cox v. New Hampshire, supra. An ordinance copied from the foregoing New Hampshire statute was sustained in State v. Derrickson, 97 N.H. 91, 81 A. 2d 312, and Poulos, which was affirmed by the United States Supreme Court, Poulos v. State of New Hampshire, supra.

The South Carolina Supreme Court thus placed the New Hampshire construction upon the Ordinance passed upon in City of Darlington v. Stanley, supra., and held that the statute as construed did not violate either the Constitution of South Carolina or that of the United States.

As noted earlier, the City of Chester enacted the permit ordinance in the constitutionally approved language passed upon in the City of Darlington v. Stanley, supra., such enactment occurring some six months after the aforementioned Supreme Court opinion. Consequently, the permit ordinance of the City of Chester is in accord with the law of the State of South Carolina.

As noted in the case of City of Florence v. George, 241 S.C. 77, 127 S.E. 2d 210 (1962):

> The requirement that the applicant for a permit state the time of the proposed parade, the course to be traveled, the number of persons or vehicles involved and the purpose of such parade is to assist the municipal authorities in deciding whether or not the issuance of a permit is consistent with traffic conditions at any particular place and time. The fact that such detailed information is required to be presented to the City Council negatives applicant's claim that the power given to that body was to be exercised arbitrarily or for some capricious reason of its own.

It is thus submitted by the State that the law of South Carolina is in accord with the Constitution of the United States. The Chester City Council, in compliance with its permit ordinance, properly denied the permit application of the Chester marchers due to a conflict of time, location and purpose of the proposed parade with a previously scheduled Veteran's Day assemblage, of which everyone - including the marchers - were aware (Tr. p. 51). Defense counsel has attempted to minimize this conflic of time, location, and purpose by urging as fact that the Veteran's Day Ceremony of November 11, 1979, was an indoor function. However, such statement is totally devoid of support in the Trancript of Record. State v. Rouse, 262 S.C. 581, 206 S.E. 2d 873 (1974).

The law of South Carolina therefore passes constitutional muster under Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed. 2d 162 (1969). In that case, the Supreme Court held that municipal permit ordinances - upon which the respective State Supreme Court has construed and defined the amount of discretion and standards allowed under such ordinances - would pass constitutional muster, so long as the construction of the ordinance occurred prior to an individual's violation of such a

permit ordinance. The Supreme Court of South Carolina has defined the limits of the discretion allowable to city councils in the granting or denial of parade permits, and the corresponding standards which serve to guide Councilmen in the exercise of such discretion, City of Darlington v. Stanley, supra. The constitutional construction of the ordinance of the case at bar occurred eighteen years prior to the arrests in Chester. Consequently, the Chester City Code Ordinance, Section 27-201, et. seq., passes constitutional muster under Shuttlesworth v. City of Birmingham, supra., as well as a host of other opinions. Cox v. New Hampshire, supra.; Hague v. Committee for Industrial Organization, supra; Cox v. Louisiana, supra.

Based upon the foregoing argument and upon the aforementioned authorities, it is submitted by the attorneys for the City of Chester that Chester City Code Ordinance, Section 27-201, et. seq., is constitutional upon its face, establishing guidelines and standards to be utilized by the City Council pertaining to the issuance or non-issuance of permits.

II.

Section 27-201, et. seq., of the City Code Ordinance was constitutionally applied to the group of Chester marchers.

The opinions of City of Florence v. George, 241 S.C. 77, 127 S.E. 2d 210 (1962) and City of Darlington v. Stanley, 239 S.C. 139, 122 S.E. 2d 207 (1961), enunciated the implicit standards of discretion to be utilized by City Councils in the granting or denial of parade permits, and it is submitted that such standards comport with the Constitution of the United States. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed. 2d 162 (1969); Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 2d 471 (1965).

Whether or not the Chester City Code Ordinance, Section 27-201, et. seq., is constitutional as it was applied is dependent upon the facts of the case at bar. Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed. 2d 222, 230 (1972); Shuttlesworth v. City of Birmingham, supra.; Gregory v. Chicago, 394 U.S. 111, 22 L.Ed. 134 (1968); Collin v. Smith, 578 F. 2d 1197, 1201 (1978). It is submitted by counsel for the City of Chester that the Chester City Code Ordinance was constitutional as it was applied to the facts of the case at bar.

The language of Cox v. State of New Hampshire, 312 U.S. 569, 85 L.Ed. 1049 (1941) must be remembered:

> Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection.

In the case at bar, the City Council, pursuant to the parade permit ordinance, had granted the marchers in the Chester Movement at least three previous permits, as is reflected by the Transcript of Record (Tr. pp. 39-40). The one time the marchers' application for a permit was denied was on November 10, 1979, due to a previously planned assemblage of Chester citizens who were commemorating Veteran's Day, an annual event (Tr. pp. 37-39; 51-53). With respect to the three previous permits granted, there had not been the problem of another assemblage of citizens wanting to meet at the same location and time (Tr. p. 40). The permit denial of November 10, 1979, was thus a unique situation with which the City Council was faced. The permit application of the Chester Movement marchers was denied due to conflict of time, location, and purpose. This surely is not a discriminatory application of the ordinance by the City Council (Tr. pp. 37-38; 51-53). As the aforementioned language of Cox v. New Hampshire, supra, states, in any other circumstance the Chester marchers may have been entitled to a permit, but with respect to the day of November 11, 1979, a previous assemblage of Chester citizens had been planned for Veteran's Day. The City Council was well within its constitutional discretion to deny the Chester Movement's permit application on the grounds of conflict of time, location, and purpose with the Veteran's Day assembly, an event of which the Chester Movement marchers

were well aware before they made application for a parade permit (Tr. p. 51).

The Chester City Council, in making it's decision as to whether or not a permit should be issued, did so based upon the criteria enumerated in Section 27-202 of the City Code, in the constitutionally approved language of City of Darlington and recognized in the case of City of Florence v. George, supra:

> §27-202 Application for Permit; Issuance of Permit
>
> Such application shall contain the following information:
>
> (1) The time of such proposed parade or procession;
> (2) The streets to be used;
> (3) The number of persons or vehicles to be engaged; and,
> (4) The purpose of such parade or procession.
>
> Upon receipt of such application, the Mayor or Council shall, in his or its discretion, issue a permit subject to the public convenience and public welfare.

Based upon such criteria, the Council found there to be a conflict with the Veteran's Day commemoration with respect to location, time, and purpose, as the record reveals that the Chester marchers had no intention of observing the Veteran's Day ceremonies with the rest of those assembled for such purpose; but rather, they had intended upon focusing on civil rights grievances (Tr. pp. 58-59, 69).

Applying the Supreme Court's construction of the city ordinance in the City of Darlington v. Stanley, supra., and the City of Florence v. George, supra., to the particular facts of the case at bar, the City Council made its decision not to issue a permit to the marchers of the Chester Movement based upon the specified criteria of the permit application.

By application of the criteria expressed in Section 27-202 of the City Code, the City Council found that the Chester Movement march conflicted with a prior assemblage of citizens who were commemorating Veteran's Day. Under Section 27-202 of the Chester Code, the Council found that it was not in the public convenience or public welfare to issue a permit to the marchers, given the conflicts with respect to location, time, and purpose. The Council expressed it's grave concern as to what might happen if two assemblies of citizens with totally different and contrasting purposes attempted to simultaneously exercise First Amendment privileges at the same location at the same time (Tr. pp. 52-53). The application was denied on that basis, and there is no evidence that it was done arbitrarily or due to discrimination. Such is borne out by the fact that prior to November 11, 1979, the City Council had issued at least three permits to the marchers. The denial of the permit on November 10, 1979, was the first such denial. It was also the first time that other citizens of the city (the Veteran's Day assembly) had obtained use of the Courthouse and lawn. This was the first time in which two groups had planned to utilize the same site, at the same time, for different and conflicting purposes. It must be noted that the Veteran's Day assemblage had exercised their First Amendment rights prior to the Chester Movement's permit application. Under such a factual setting, it cannot be said with justification that the City Council's action was arbitrary and discriminatory.

There are two final points. Counsel for the appellants' defense points to the statement of Mayor James T. Funderburk as

evidence of discrimination or arbitrary use of power to deny the marchers' permit application. Counsel for the City of Chester submits that the contention has little merit. Whatever the motivation behind the Mayor's personal comments - as he testified they were (Tr. pp. 23, 27), such comments were not binding upon the City Council because it was the City Council which made the decision as to whether or not a permit should be issued (Tr. p. 24). In the Council form of government, the Chester Mayor did not have a vote, nor could he make a motion to deny a permit. All such action is within the province of the City Council, and was exercised by the City Council in the denial of the Chester application (Tr. pp. 26-27). The simple fact that the Mayor issued a statement of his own personal views is insufficient to cite as an example of the reason for the denial of the permit, particularly so when a separate body - the City Council - denied the permit for legitimate reasons, as earlier discussed. It is submitted that the Mayor's conduct, and that of the City Council - by view of the facts - is not one and the same. The record is barren of any evidence which shows discrimination on the part of any members of the City Council, which after all, was the body which in fact denied the permit.

The final point concerns the applicability of the case of Shuttlesworth v. City of Birmingham, supra., to the case at bar. It is submitted that such applicability is determined by a review of the facts of the Chester case. On that basis, the facts and result in Shuttlesworth v. City of Birmingham, supra., are clearly distinguishable from the facts of the case at bar, and thus the facts and result of Shuttlesworth are not controlling.

The facts of Shuttlesworth are distinguishable by the following particulars:

1. The ordinance ruled upon in Shuttlesworth had been enacted by the City of Birmingham, and was broad in its scope, attempting to regulate matters which had nothing to do with highway regulation or public welfare, but rather, the ordinance attempted to regulate "public morals decency, and health". The ordinance thus encompassed every type of human conduct conceivable, and appeared to emphasize the regulation of human activity, as opposed to providing access to the public to the public streets.

2. The Birmingham ordinance provided no criteria to guide the City Commission in its determination of what violated the "public welfare, peace, safety, health, decency, good order, morals or convenience". The Alabama Supreme Court had not interpreted the ordinance until four years after the arrest in question.

3. The United States Supreme Court focused upon the aforementioned language of the ordinance and concluded that it was overbroad and vague, in that there was no limit to the discretion of the City Commission. The Court further noted that at the time of the arrest there had not been given to the ordinance a constitutional construction by the Alabama Supreme Court.

4. The Alabama Supreme Court did in fact give the ordinance a constitutional construction - four years after the arrest, but the United States Supreme Court did not find this sufficient because there had been no evidence submitted to the effect that the City of Birmingham would follow the constitutional construction of the State Supreme Court.

5. Under the ordinance of the City of Birmingham, the Commission itself publicly declared that no permit would be issued to the marchers, and threatened the marchers with prison.

The facts of the case involving the City of Chester are opposite to the foregoing facts of the City of Birmingham.

1. The marchers in Chester had been issued three prior parade permits to march by the City Council, whereas the marchers in City of Birmingham had not been issued a single permit.

2. The parade ordinance of the City of Chester had been enacted pursuant to the constitutional guidelines established by the Supreme Court of South Carolina in City of Darlington v. Stanley, supra., and this had occurred in 1962, seventeen years prior to the arrest of the marchers. The City Council had thus expressed its intention to be bound by the constitutional construction placed upon its ordinance by the State Supreme Court.

3. The Chester ordinance encompassed specific criteria - Section 27-202 upon which Council members would rely in their decision making process upon each permit application. This contrasts with the broad language embodied within the Birmingham ordinance.

4. The Chester ordinance regulates only that conduct which is related to the use of the public streets and places. Unlike the Alabama ordinance, the City Council did not attempt to regulate the "public peace, health, decency, or morals" of the citizens of the City of Chester via a parade ordinance.

5. There is no evidence in the record that the Chester City Council denied the parade permit for discriminatory or arbitrary purposes.

6. Unlike the factual considerations in Shuttlesworth, the parade permit in the Chester case was denied due to conflict of location, time, and purpose of the march with a preplanned Veteran's Day assembly. There was no such conflict of assemblies in the Shuttlesworth case; indeed there was not any other assembly going on at the time of that parade.

7. The City Council's denial of the permit on November 10, 1979, was the first time a permit had been denied by the Council.

8. The Mayor, while expressing his personal opinion, was not a member of the City Council, and thus did not vote to deny the permit.

9. There is no evidence of arbitrary application of the Chester ordinance by the City Council upon the marchers.

10. The marchers knowingly and willfully violated the law by parading on November 11, 1979, with the knowledge that the permit had not been

> granted, thereby precipitating a potential conflict with the Veteran's Day assemblage which would be contrary to the public convenience, the public welfare, and good order.

It is therefore submitted that the Chester City Code Ordinance, Section 27-201, et. seq., as applied to the marchers of the City of Chester on November 10, 1979, comported with the test enunciated in the opinion of Shuttlesworth v. City of Birmingham, supra.:

> Whether control of the use of the streets for a parade or procession was, in fact, exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places.

The City of Chester did not exert unconstitutional control of the streets. The permit was denied for the reasoning as expressed earlier - found within the Transcript of Record (Tr. pp. 37-38). Although the Record does not reflect whether or not another parade route was offered to the marchers by the City Council, it is submitted that by law the City Council was not required to do so. The Ordinance provides that the City Council shall pass upon all permit applications submitted to it. It does not authorize anything else. Had the marchers intended to avoid a conflict of scheduling with the Veteran's Day assemblage, it was incumbent upon them to submit a permit application designating an alternate route. It is evident from a review of the Record that the marchers did not submit an alternate route proposal, which evinces an intention on the part of the marchers - for reasons unknown - to deliberately arrange a conflict of time, location and purpose with the Veteran's Day commemoration.

It is submitted that a group cannot so infringe upon the First Amendment rights of other citizens under the guise of exercising First Amendment privileges. Cox v. Louisiana, supra.

Appellants have urged that the passage of a thirty day ordinance by the City Council on November 12, 1979, is evidence of discrimination against the marchers. Such ordinance, however, was enacted subsequent to the arrests made in the case at bar, and as the lower court found, there was no evidence that the marchers in any way were affected by this ordinance (Tr. pp. 72, 87-88). Indeed, the Record reflects that the marchers were granted a permit on December 1, 1979 (Tr. pp. 75-76) thus negating any inference of discrimination.

There is no evidence that the Chester Ordinance had been administered otherwise than in the fair and nondiscriminatory manner which the State court has construed it to require. Shuttlesworth v. City of Birmingham, supra.; Cox v. State of New Hampshire, supra.; City of Darlington v. Stanley, supra. For all of the aforementioned reasons, it is submitted that the case at bar is not controlled by the facts nor the results of the Shuttlesworth case, and thus the City Council of Chester constitutionally applied Section 27-201 et. seq., to the marchers on November 10, 1979.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the appeal in this case should be dismissed.

Respectfully submitted,

DANIEL R. McLEOD
Attorney General

BRIAN P. GIBBES
Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT.

Appendix

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

81-6202

Appeal From Chester County
The Honorable George F. Coleman, Judge

CITY OF CHESTER,

Respondent,

v.

NAOMI ADDISON, ET AL.,

Appellants

TRANSCRIPT OF RECORD

GLENN B. MANNING
Attorney at Law
P.O. Box 1001
Bennettsville, S.C. 295[illegible]

ATTORNEY FOR APPELLANTS

DANIEL R. McLEOD
Attorney General

KAY C. CROWE
Assistant Attorney General

LINDY P. FUNKHOUSER
Assistant Attorney General

WAYNE G. CARTER, JR.
Staff Attorney
P.O. Box 11549
Columbia, S. C. 29201

JOHN R. JUSTICE
Solicitor, Sixth Judicial Circuit
P.O. Box 728
Chester, S. C. 29706

ATTORNEYS FOR RESPONDENT.

DEC 11 9 25 AM '81
CLERK OF COURT

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STATEMENT

This is an appeal from an Order of the Honorable George F. Coleman, dated June 21, 1980, dismissing the appeal of Naomi Addison, et al., from the City of Chester, Recorder Court Orders dated December 6, 1979 and December 12, 1979.

The Appellants were arrested on November 11, 1979, and charged with staging a march without a permit. Pre-trial motions on behalf of the defendants were heard by the Honorable Lamar H. Kelsey, III, City Recorder on December 3, 1979. By agreement of Counsel all thirty-five (35) defendants were to be tried together. On December 6, 1979, the City Recorder issued his Order denying the defendants' pre-trial motions to dismiss the charges. The defendants were subsequently tried on December 12 and 13, 1979, in Chester, South Carolina, with the Honorable Lamar H. Kelsey, III, City Recorder presiding and a jury. The jury returned a verdict of guilty as to all defendants on December 13, 1979, and the trial judge sentenced each defendant to a fine of one hundred and no/100 ($100) dollars plus eight and 25/100 ($8.25) dollars or thirty (30) days in jail.

Counsel for defendants was served a copy of Judge Coleman's Order by the South Carolina Attorney General on June 23, 1980, by mail.

Counsel for the Defendants-Appellants served his Notice of Intention to Appeal on the attorneys for the Plaintiff-Respondent on July 3, 1980.

STATE OF SOUTH CAROLINA

County of Chester

THE STATE
against

Naomi Addison

ARREST WARRANT

Offense Parading Without a ~~License~~ Permit

Code Section 27-201, et. seq.

Date November 11, 1979

Officer and Agency Sgt. W. R. McWaters
Chester Police Department

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name Naomi Addison

Address 100 Flint Street
Chester, South Carolina

Phone

Sex F Race B Height 4'5"

Weight 180 Birthdate 12/25/35

Social Security Number

INFORMATION ON WITNESSES

Name

Address

Phone

Name

Address

Phone

Name

Address

Phone

PRELIMINARY HEARING held by

Magistrate

on , 19

with
Attorney for Defendant.

Decision:

BAIL

Date Set , 19

Magistrate

Amount

Surety

Form Approved by
S. C. Attorney General
Section 17-13-160
March 15, 1978

Arrest Warrant A 174979

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF CHESTER

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF Chester, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of defendant]: Naomi Addison

did on the 11th day of November, 19 79, violate the ~~criminal laws of the State of South Carolina~~ municipal laws of the City of Chester as set forth below:

DESCRIPTION OF OFFENSE

The Defendant, having received notice did knowingly and willfully violate Chester City Code Ordinance 27-201, et. seq. by unlawfully parading on the streets and public places within the city limits of the Municipality of Chester, without first having obtained a permit in accordance with law.

Now, therefore, you are empowered and directed to arrest the said defendant and bring her before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Done at Chester, S. C., this 11th day of November, 19 79.

(L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHESTER

Personally appeared before me, a ~~magistrate of said County~~ recorder of the City of Chester, one Sgt. W. R. McWaters, who, first being duly sworn, deposes and says that [name of defendant] Naomi Addison

did within this County and State on the 11th day of November, 19 79, violate the ~~criminal laws of the State of South Carolina~~ municipal laws of the City of Chester in the following particulars:

DESCRIPTION OF OFFENSE

The Defendant, having received notice did knowingly and willfully violate Chester City Code Ordinance 27-201, et. seq. by unlawfully parading on the streets and public places within the city limits of the Municipality of Chester, without having first obtained a permit in accordance with law.

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

On November 11, 1979, between the periods of 1-5 P.M. Defendant was a member of a group of marchers approaching the Chester city limits. I was located at the city limits, in accordance to an order by the Chester City Chief of Police, who related to us that a group of marchers intended to parade into the City of Chester and proceed to the city courthouse. The basis of the chief's information had been supplied to him by the marchers themselves. As Defendant approached the city limits he/she was notified that he/she would be guilty of violating City Code Ordinance 27-201, et. seq. if he/she paraded into the city since a lawful permit to parade had not been obtained by Defendant. Defendant, upon receiving such notice, did knowingly and willfully parade into the city limits. Defendant was then placed under arrest.

Sworn to and Subscribed before me

this 11th day of November, 19 79.

Signature of Judge (L.S.)

W.R. McWaters
Affiant

Address _____

_____

Phone _____

FORM CONTINUES ON BACK

DUPLICATE

RETURN

Nov. 11, 1979

Bernard M. Cipriano
Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

Warren Holder

on the 11th day of Nov. 19 79

Bernard M. Cipriano
Constable or Law Enforcement Officer

This Warrant is certified for service in _____ County. The accused is to be arrested and brought before me to be dealt with according to law.

(L.S.)
Signature of Judge

THE COURT: So, with respect to the motions, Mr. Manning, I have asked that you proceed by making a motion and then if you have any offers of evidence, you would like to present on behalf of that motion, we would like you to do it then, we would like to proceed separatly.

MR. MANNING: Your Honor, I understand exactly what you are saying, and again there is no rule or regulation which says that I have to put up evidence of one and then discuss that one and then do the same and move to the other. Your Honor, I submit to you, that any information that is given here, is within your Honor's discretion, after that information is given, and as you indicated this is not a trial, which means that you don't have to protect everything going into the record because you don't have a jury that listens to it.

THE COURT: That is correct.

MR. MANNING: You are the Judge, and at some separate time I would assume that you are going to relisten to the testimony here and make your decision. So I submit to you, that in your good judgment you will know what and what not to consider, but for this not to go into this record at this time, certainly we feel like that it is an infringment upon due process of the law, the 14th Amendment, and certainly with respect to the Defendants here, a prior restraint on their 1st Amendment right.

THE COURT: Yes sir.

MR. FUNKHOUSER: Your Honor, for the record, we would like to state our position,as to A and B we have no problem with testimony concerning that matter, because they arguably applies to these arrest and to this prosecution, as we understand that particular matter to be a matter which took place subsequent to these arrests, subsequent to the time these prosecutions occured. Our position is that this has no relevance whatsoever to this particular case since they took place afterwards. All that testimony would show is that this questioned ordinance was passed by the City Council after these arrests had been made. No way connected to or involved in this particular prosecution and the time it occured and at the time these offenses were committed. That is the State's position your Honor. I think we have stated it as succinctly as we can.

THE COURT: I agree, Mr. Funkhouser. So Mr. Manning, I would appreciate and this Court would appreciate, of course you can make any objections you would like to at this time, as to the manner in which this Court proceeds, and that's final.

MR. MANNING: Your Honor, may I ask the Court a question?

THE COURT: Go ahead.

MR. MANNING: I have listened to Mr. Funkhouser, I have also listened to you, and what you are doing in effect is telling me I can not put in certain information.

THE COURT: I am not telling you that Mr. Manning. I am not telling you that at all. I was just--You have made certain motions here and for the clarity of the Court and for the Court to look at them. We would appreciate you making those motions. You seem to have separate grounds here that you have stated in your motions, A, B, and C and I have asked you to proceed with C, by making a motion with respect to that ground and after you have presented that, the Court will consider that and then if you have any evidence that you claim you would like to present on that motion this Court will listen to that and determine whether that is relevant to this Court's decision on that motion. That's all this Court is asking you to do.

MR. MANNING: Your Honor, again I state that what you are doing in effect, and I certainly have to abide by your ruling, don't misunderstand me on that. What you are doing is preventing me, the moving party, from proceeding. I can understand if there is hearsay evidence or something like that to be admitted, that can't be introduced here, you don't have to consider it. What you are in effect saying is that, no, you can not present evidence or whatever with respect to A, B,,or C, without doing it in a particular way. Now, I am simply saying to you that I can call a witness to give testimony of A, B, or C and then afterwards I can argue based on my motions, based on the testimony that

has been given. Now if you are telling me that I have to argue first, then you are in effect denying me the effective representation of my clients. I have a right to proceed any way I see fit. You have the authority and the obligation as well as duty to consider anything that's put in here, at least it should be admitted and you listen to it at a separate time. You have the sole authority to grant, deny or leave out whatever you want, at your discretion, but you cannot in effect, I submit to you, tell us that we cannot put into evidence testimony with respect to A, B and C. These motions were served; they are proper before this Court, and for the prosecuting attorneys to come in at this time and say that I cannot produce information or evidence with respect to these Courts and if the Court takes that same position, we feel that we are denied our particular constitutional rights with respect to effective representation of the Defendants in this particular case. We submit to you your Honor that that is highly improper and we submit to you that it is also not in keeping with the Code of Laws of South Carolina with respect to criminal procedure in this state.

MR. FUNKHOUSER: I would point out just one point your Honor. The order of proof or the order of conduct of any hearing before a Court is within the sound discretion. If the Court wishes to consider A first, then consider B first, then consider C, as I understand his Honor's rule. The Court can

go ahead and decide to do that within its sound discretion. I think that's all the Court is saying. I don't think that the Court is saying that it is denying Mr. Manning his right to present evidence in support of his claim. Of course the Court has the right to rule on the relevance of evidence. All we are saying is that once the testimony is offered that claim as to C. will prove to be irrelevant. We would like to have that set out separately.

THE COURT: Thank you.

MR. MANNING: Your Honor, if I may respond to what Mr. Funkhouser has said. I think Mr. Funkhouser in effect has agreed with what I have been trying to get the Court to see. This Court may consider or may not consider this evidence with respect to C. That is after it has already been placed before the Court. The Court cannot in effect tell me I can't present this evidence to the Court. As I have stated before, this is not a jury trial, now if it were a jury trial, then I can see your Honor saying, well no we're not going to listen to this here or if we do I am going to excuse the jury. This is not the situation here. We are arguing motions, and I submit to you I can present any testimony, any evidence that is going to help substantuate the motions I have presented to this Court. That's all I am saying. That is proper; that is within the authority of the Code of Laws of this State, as well as the Constitution of South

Carolina and that of the United States of America.

THE COURT: Mr. Manning, I agree to a certain extent with what you are saying. As I understand, it is this Court's responsibility and within its discretion to here these motions, and I understand that you have made certain motions and this Court would not for a minute deny you the right to present evidence if that is proper under the circumstances. It appears to me that you have made certain motions and have grounds for those motions. All this Court asks you to do is to make those motions and present those grounds, and that is all this Court is asking you to do. It appears to me from your written statement of those motions that you have three grounds in which you would like to bring matters--information before this Court. That's all this Court is asking you to do. And so at this time I'd ask you to make those motions and set out the grounds as you have done here in your written information to this Court. All I would ask you to present--If we could move with respect to C, the grounds with respect to C. Whether that motion and grounds therefore required any evidence, if you'd make that motion and then we can argue that motion and then if you would like to say that you have some other information to present on that motion this Court will yet attain that motion and decide then.

MR. MANNING: Your Honor, you are in effect telling me that

I cannot proceed before this Court the way that I deem necessary under the circumstances. You're telling me that I have to argue first before I can produce any testimony.

THE COURT: Mr. Manning I am not telling you that at all. The only law proceedings that I've been involved in is where people made motions and that's what I'm asking you to do now is to make a motion. I'm sorry that you feel the way you do but all this Court is asking you to do is to make a motion at this time and then the Court will consider those motions.

MR. MANNING: I understand that. Your Honor, you are restraining me.

THE COURT: I'm sorry, Mr. Manning. I'm sorry that you feel that way and this Court notes your objection and ask you to write down your objection to the proceedings at this time and this Court will certify any objections you have at this time to the Court's mold of procedure. We ask you to move forward at this time by making motions and by giving us the grounds of those motions.

MR. MANNING: Your Honor, you have before you the motions and the grounds that's set out here. The prosecution attorneys have had the grounds all along. They're here. You've received the original as well as a copy of these grounds so that is already set out here. What I am saying in effect is that if I desire to put up testimony as to one

of these motions I can, prior to arguing to you the law based on these here particular motions. That's what I am saying and I cannot and I'm sorry your Honor if I fail to see it but I cannot see why that is improper at all or why this Court will not allow that. I mean that--that is in keeping with arguing motions especially centered around a particular case like this, your Honor.

MR. FUNKHOUSER: If you please your Honor, I understand the Court is telling Mr. Manning to proceed with respect to grounds C. Our position is to go ahead with grounds C and start right now with this case.

MR. MANNING: Your Honor, I am the moving party and I have listed them as A, B and C orders and there is nothing, nothing unless I can say that well, I'm going to strike A and B. There is nothing we feel and I submit to you that this Court can do to make me skip over A and B and go to C.

THE COURT: Well, this Court is not asking you to do that. This Court at this time just ask you to make a motion and state your grounds for that motion and you can argue that motion and then if you have evidence to present on that motion then this Court will consider whether to hear that evidence.

MR. MANNING: Your Honor, again you are telling me that I can't produce testimony before I argue. Now I can present evidence before I argue the motion based on the evidence

and the law.
THE COURT: Mr. Manning, I know of no rule that states that that is how you are suppose to proceed at motion type proceedings.
MR. MANNING: Your Honor, may I ask the Court this question.
THE COURT: Al right sir.
MR. MANNING: Do you know of a rule that requires the defense attorney to proceed the way you are suggesting?
THE COURT: No sir. I am saying that this Court is doing it. That the Court here today has the responsibility to hear your motions and the responsibility to see that process is conducted in an orderly fashion and it has the responsibility to determine that only irrelevant and material matters are presented before the Court and this Court is doing that at this time. And so this Court would ask you to just make a motion with respect to the law involved and your objections to the law and the grounds for it and then proceed.
MR. MANNING: Your Honor--
THE COURT: After you've made your motions and stated your grounds and you argue it and you have testimony that you think is irrelevant to your particular motion the Court will yet attain a motion on your behalf to present that evidence to the Court--Whether this Court should receive that information or not.
MR. MANNING: Your Honor--

THE COURT: So at this time we would ask you to proceed.
MR. MANNING: I will your Honor but I just need to make one thing that's clear. You're telling me that I can't produce testimony in support of these motions before I argue the law.
THE COURT: No sir.
MR. MANNING: That's what I'm saying. I mean--I'm saying that I want to present testimony.
THE COURT: And we understand that. So I ask you to make a motion and set out the grounds of your motion and we'll hear that and see what it is and then if you have testimony with respect to that which you think is helpful this Court will yet attain a motion to have that information brought before the Court. So if you will just proceed with your motions.
MR. MANNING: Your Honor, I'm still extremely confused and I still hate to burden the Court with respect to this. I do not follow what you're saying because if I--Let's take for example No. 1, City of Chester Ordinance 27-201,202,203 is invalid on its face.
THE COURT: Alright sir. Now why? What principal law do you base that?
MR. MANNING: O. K. Now what I'm saying to you at this point and time is that if I desire to produce testimony at this time I have a right to do that.

THE COURT: Alright sir. We will determine that when we get there. So I ask you now--

MR. MANNING: We're there now your Honor.

THE COURT: As I understand, are you making a motion that the City of Chester Ordinance 27-201,202,203 is invalid on its face? Is that your motion?

MR. MANNING: That is one of the motions.

THE COURT: Alright sir. So I ask you what principal of the law is involved in that? Is that involving the 1st Amendment, 4th Amendment does it involve--what law is involved in that motion?

MR. MANNING: Your Honor, I have extensive memorandum on--

THE COURT: Well, I just ask you to make a motion.

MR. MANNING: Your Honor--

THE COURT: And then we will proceed.

MR. MANNING: What I'm saying to you at this point and time and I certainly fail to see why you don't want me to produce any testimony.

THE COURT: I'm not saying that Mr. Manning. This Court ask you one more time and I don't want to have to ask you again to move on at this time.

MR. MANNING: I would like to move by producing testimony at this time with respect--

THE COURT: This Court will accept that but this Court ask you first to make a motion.

stated here are separate and distinct principals of laws that involve separate and distinct consideration and principals of law. I ask you at this time to move forward in that vein.

MR. MANNING: Your Honor, I have just started to move forward and I can assure you that if you look at A, B and C you would now that the same ordinance and sections are listed in here 27-201,202,203 and A, B and C. Now again I just fail to see why you will not let me proceed in this manner.

THE COURT: Mr. Manning, I'm letting you proceed. I'm asking you to proceed and to move on with this. I'm asking you to proceed with A. Will you please state to this Court the grounds for your motion for A? What law supports the violation you have set out there?

MR. MANNING: Your Honor, if the Court please I will like to call testimony at this time and then I will argue that way. I've argued a lot of motions in my life your Honor, before various Courts and I submit to you that presenting testimony prior to arguing is certainly a bases in all Courts. I fail to see why this Court will not allow that.

THE COURT: This Court will allow that Mr. Manning.

MR. MANNING: That's what I'm asking.

THE COURT: This Court has a duty ot inquire into the relevancy of any testimony that this Court hears. Now, it may be the position of the prosecution that some testimony is

not relevant to the particular question or principal that you bring up.

MR. MANNING: That's fine and I feel like at that time they may note their objection and you may rule on it and consider the matters of these motions at separate times. That's the purpose of having--

THE COURT: This Court does not want to hear evidence all day that is not relevant.

MR. MANNING: Your Honor, I have not presented any evidence and I submit to you that you are suggesting that I am going to submit evidence that is relevant here and I have not presented anything. I'm saying let me get on with it. That is what I'm in effect asking the Court is to let me present the evidence and at a later time you listen back and you can determine whether it's relevant or not. That's your duty. But I feel like you're restraining me from effectively representing my clients by not letting me move forward.

THE COURT: Mr. Manning, I hate that you feel that way but I ask you at this time to move forward with your motions in the manner that I have presented to you.

MR. MANNING: So you're in effect telling me that I cannot present testimony prior to arguing on point A, B or C.

THE COURT: That's correct.

MR. MANNING: We'll we certainly object to that your Honor.

THE COURT: Mr. Manning your objection is noted. Now I ask you to make your motion with respect to A as you have set out in your written motion to this Court.

MR. MANNING: Your Honor, I have one other question and I've already noted my objection.

THE COURT: That's correct and you're objection runs through the entire proceedings and the Court will see to that.

MR. MANNING: What I would like to find out at this point is if when I get to a particular point in my argument where that needs to be corroborated then what should I do at that point.

THE COURT: You need to make a motion that you have some other evidence that you would like to present to the Court.

MR. MANNING: I'm trying to suggest to you now, your Honor, that if you will let me proceed the way that I stated I would like to proceed, which I feel like is a basic right of the defense attorney to proceed since I am the moving party, then we won't have to cross that bridge.

THE COURT: Well, I think that we should proceed the way that I have laid out, Mr. Manning. This Court would appreciate you, as an officer of the Court moving forward in that manner and this Court certainly notes your objection to the Court's ruling and this Court will preserve that objection throughout this afternoon and the motions you made. This Court ask you to move forward in the manner that this Court

has suggested to you.
MR. MANNING: Yes, your Honor, at this point I would like to request that the parties including the Mayor and the City Council who have been subpeonaed here to be excused.
THE COURT: Do you have any objections?
MR. FUNKHOUSER: Your Honor--
MR. MANNING: I'm not withdrawing anything. I have a right to sequester the persons I have called as my witnesses. They are my witnesses. The State did not call them. They are not the State's witnesses.
THE COURT: Are you asking the State a question or are you asking that they be released.
MR. MANNING: To be removed from the Court Room at this time, not to be released to go back where they came from but just to be outside the perimeter of these walls here.
THE COURT: Do you have any objections?
FUNKHOUSER: I have no objections to that, your Honor, as long as we keep moving along.
THE COURT: Al right sir. I ask the Mayor and City Council if they would retire to the conference room.
MR. MANNING: Your Honor, as I have related to you there are three motions that are included in this particular case. (A) City of Chester Ordinance 27-201,202,203 in invalid on its face (B) City of Chester Ordinance 27-201,202,203 is unconstitutional as applied (C) City of Chester Ordinance is unconstitutional because of the thirty day waiting period.

Your Honor, I feel like there are three distinct questions involved here. First as well as it is unconstitutional to deny a group based on the fact that if the Mayor or City Council, on the grounds of discretion, issue a permit with definate guidelines subject to the public convenience and public welfare.

THE COURT: Mr. Manning the Court understands that you are speaking as to the validity of the statute on its face. Is that correct?

MR. MANNING: That is correct your Honor.

THE COURT: Alright..

MR. MANNING: I submit to you your Honor that the United States Constitution, as well as the United States Supreme Court in a landmark decision some eleven years ago. In Shuttleworth vs City of Birmingham 394 U.S. 147 1968...

(ARGUMENTS OF COUNSEL)

THE COURT: I ask you now to move on to your second grounds. That the matters are unconstitutional as applied. We ask you to move forward with that ordinance.

MR. MANNING: Your Honor, may I present testimony before I argue please.

THE COURT: Alright. What do you have to say about that Mr. Funkhouser?

MR. FUNKHOUSER: If it pleases the Court, can we go ahead and have testimony?

THE COURT: Who would you like to call?

MR. MANNING: I'd like to call the Mayor.

JAMES T. FUNDERBURK

A witness, who after being duly sworn, testifies as follows:

DIRECT EXAMINATION

Q. (By Mr. Manning) Mayor Funderburk, my name is Glenn B. Manning and I represent the Defendants here and I have only a few questions. You have issued a public statement and it is my understanding that the entire statement has been run in one of the local papers. I have the newspaper clipping which appeared in Tuesday, November 6, 1979 which was taken from the Evening Herald, page 1. Look at that and tell me if that is your statement.

A. Right.

Q. It is.

A. Yes sir.

Q. In the statement I would also ask you if you stated that. Let me put it this way. I'm going to read the first portion from the newspaper statement into the record. And for the Court I read you the statement.

MR. FUNKHOUSER: If it pleases the Court, I would like for him to have all the statement--that he was suppose to have made.

MR. MANNING: Your Honor, he has admitted to making the statement and as defense attorney I can select any portion

of this statement I want to. If he wants to come back on rebuttal with something different, he can. But he can't tell me how to proceed.

MR. FUNKHOUSER: If he's going to read all the statements out of this one article that were alleged to be made by the Mayor, I would like for him--

THE COURT: Don't talk to each other. Go ahead Mr. Funkhouser.

MR. FUNKHOUSER: I would like to have all of it from the article.

THE COURT: Alright sir, as I understand it this is to be additional evidence and I believe that you will have the opportunity to present all of it al that time. So I'll ask you to proceed.

MR. MANNING: Let me ask you a question. He'll be allowed to bring all of what?

THE COURT: All of that statement. If he desires to publish any more of that statement that has been introduced here then he has the right to do that. Proceed forward.

MR. MANNING: Your Honor, I object that he can't tell me what to do or what not to do.

THE COURT: He can make an objection. This Court has heard that objection and ruled on that objection and we're asking you to proceed if you would.

MR. MANNING: I would call the Court's attention to the

Evening Herald dated November 6, 1979. Quoting from a statement issued by the Mayor James T. Funderburk. The statement reads in part "Chester has the finest people in all the world, and our people consider it outrageous that Communist Party people were in our city this past Saturday. We have had enough. If our Chester citizens want to march, then the Chester City Council will consider their request for a permit, but there will be no more permits issued where Golden Frinks or the Communist Party is allowed to be involved in any parades" and so forth.

THE COURT: Mr. Manning, the Court would like to receive that, of course we have problems with testimony and this Court would like to mark that Defendant's Exhibit #1.

MR. MANNING: Your Honor, I have a copy. I'd like to keep the original.

MR. FUNKHOUSER: I would like for him to ask also that--

MR. MANNING: I can ask him whatever I want. He admitted that this was his statement. He looked at it.

THE COURT: Don't talk to each other.

MR. FUNKHOUSER: For the record I want him to say that he made the statement.

MR. MANNING: Your Honor, this is my witness.

THE COURT: Wait a minute. OK Now as I understand your objection Mr. Funkhouser, is that you would like to have him say that he made it.

MR. FUNKHOUSER: Just for the record.
THE COURT: As I understand, Mr. Funkhouser, you'll have the opportunity to do that.
MR. FUNKHOUSER: Alright sir.
THE COURT: Please could I now have that piece of paper that you read from Mr. Manning.
MR. MANNING: Yes, your Honor, I'll give it to you.
Q. (BY MR. MANNING) Mayor you stated that this is your statement. Is that correct?
A. My statement.
Q. You are the Mayor for the City of Chester.
A. Yes.
Q. After this statement was issued was there an application for a permit subsequently written and denied by you and/or the City Council?
A. Say that again.
Q. After the statement was printed, was a permit--was an application for a permit presented to you and denied by you and/or the City Council?
A. Yes.
Q, Is this the same denial that resulted in the arrest on November 11?
A. No. That statement was a statement made by me personally. No member of the City Council had anything to do with that statement.

Q. May I ask this questior now. was a permit subsequently denied for November 11 after this statement was made?
A. The City Council of Chester definately denied a permit after that statement had been made.
Q. Did you take any part in the denial of the permit?
A. Yes.
Q. When the application was presented to whom does it go?
A. When an application for a permit? Yes it would be given to me, right.
Q. What action would then be taken on your part? You and/or the City Council have received three previous permits for marches.
A. Yes, I believe that's correct.
Q. Do you recall what day this permit was denied?
A. November 10.
Q. To whom was this letter addressed?
A. Mr. Golden Frinks, Field Secretary for the S.C.L.C.
Q. Who signed the application?
A. Frinks.
Q. Who made application before?
A. I cannot answer that question. Some just had Frinks name, some of them had several names.
Q. Now let me ask you this question here. Is it not true that on November 12 you and the City Council at that time issued a rule or law that would require all future

persons who are seeking a parade permit or other--
MR. FUNKHOUSER: I object your Honor.
THE COURT: Just a minute, we have an objection. State your objection Mr. Funkhouser.
MR. FUNKHOUSER: My objection is what he's dealth with is exactly what we talked about before and has no relevancy to this particular prosecutions testimony. He's talking about a 30 day ordinance which happened after the prosecution of this case.
THE COURT: OK What is your statement on that Mr. Manning?
MR. MANNING: Your Honor, as I said before you cannot pick out one isolated incident in this particular situation on fact over a period of time and I'm trying to solicit from the Mayor here, if that was in fact done on the 12th. This is a continuation of events.
THE COURT: I'll allow you to ask that question but I won't allow you to go into it. Go ahead and ask that question.
Q. (By Mr. Manning) On the 12th did the City Council meet in an emergency session and pass a law or ruling that stated in effect that all future permits, parade permits, there must be a 30 day waiting period? Is that correct?
A. No. It was not an emergency session. It was a regular meeting of City Council and toward the end of that regular meeting of City Council, a councilman made that motion and it was adopted.

Q. Now all before that time, the ordinance for the city since 1961--This kind of action has not been taken. Is that correct?

MR. FUNKHOUSER: He's going into it your Honor, just as you have instructed him no to do.

THE COURT: Alright sir. I'll let him ask that question.

Q. (By Mr. Manning) Up until this particular time, that is November 12, out of all the years the ordinance has been in effect, that kind of action has not been taken. Is that correct?

A. I can speak for the last four years.

Q. I'm talking about just from your personal knowledge?

A. It has not.

Q. Do you know what councilman made that motion?

THE COURT: That's enough of that Mr. Manning. I think that the Court has received enough information concerning that from this witness.

MR. MANNING: That's all I have for this witness. I'd like to proceed with the motions.

THE COURT: I'd like to give the State the opportunity to question this witness.

CROSS EXAMINATION

Q. (By Mr. Funkhouser) Mayor Funderburk, who denied the application for the permit?

A. Who denied the application for the permit?

Q. Yes sir.
A. The entire City Council.
Q. The statement referred to by Mr. Manning, where your Honor said"he would not consider a request for a permit," is that right?
A. That I would not.
Q. Did the City Council consider the request for the permit?
A. Yes sir.
A. And did the City Council rule that the permit not be granted?
A. The City Council denied the permit.
Q. As the result of that meeting did the City Council state its reasons why the permit--
MR. MANNING: I would object to that unless he's going to let me go further because there is other things that came up after which if he's allowed to ask that question, I should be allowed to present testimony.
THE COURT: Now, as I understand, Mr. Manning the question. We won't have any disturbances here. Now as I understand his question dealing with the matter of the denial or granting of the order that we are facing. I understand that to be his question and so I ask, why isn't that proper? I'll ask you to answer that. Why is that not proper?
MR. MANNING: I'm not saying that it isn't proper. I'm

saying that if you're going to let him ask those kind of questions, I feel like you should let me proceed as to--

THE COURT: I'll note your objection to the ruling.

MR. MANNING: I'm not objecting. I'm trying to put this in Court.

MR. FUNKHOUSER: If he's not objecting, I would like for him to go on.

THE COURT: I understand that and I'll allow him to proceed. If you'll make what statements you want to make after he's finished.

MR. MANNING: Let me ask anything because I have a right to bring out anything.

THE COURT: Go ahead, Mr. Funkhouser.

Q. (By Mr. Funkhouser) As Mayor did you issue a statement or grievances as to why the application was denied in this particular case.

A. Yes sir.

Q. Would you please identify that?

A. That is exactly the reason that the permit was denied.

MR. FUNKHOUSER: I submit that this be placed into evidence.

MR. MANNING: Your Honor, I would like for it to be read because he says that it's some letter that was got from them.

THE COURT: You'll have the opportunity to question him about it. That's a new matter.

MR. MANNING: Before it's introduced into evidence, I'd like to find out whether it was sent to Mr. Frinks.
THE COURT: This is Mr. Funkhouser's evidence. You'll have an opportunity. If he has a bases for introducing it, you'll have the right to cross-examine the witness. I'll ask you to move forward. What is your statement?
MR. MANNING: If the Court please, any evidence that is, written evidence, or recorded evidence that's presented before the Court,. the defense attorney has the right to examine and ask questions about the authenticity of it before it is even admitted. There has been no foundation laid for the submission of it.
MR. FUNKHOUSER: I intend to lay the foundation.
THE COURT: I think counsel intends to lay the foundation.
MR. MANNING: Well, he has not done it.
MR. FUNKHOUSER: If he gives me the chance, I will your Honor.
THE COURT: We're going to ask Mr. Funkhouser to proceed and lay the foundation and at that time if he offers that evidence you'll have the opportunity to object to it.
MR. MANNING: Thank you, your Honor.
Q. (By Mr. Funkhouser) Mayor Funderburk, is this the statement of reasons denying the permit?
A. That is the statement of reasons why the permit was denied.
Q. Was not a copy of this given to Mr. Golden Frinks?

A. Yes sir.

Q. What date was the day that the council met and drew up the reasons why they denied the permit?

A. 10th

THE COURT: He's going to introduce that piece of paper into evidence.

MR. FUNKHOUSER: Right.

MR. MANNING: Your Honor--

THE COURT: Any objections. Just state them if you have any.

MR. MANNING: I would object--

THE COURT: State your grounds of objection.

MR. MANNING: OK This is to Mr. Golden Frinks. I submit to this Court that this is the original and if Mr. Golden Frinks name is on the original, then Mr. Golden Frinks should have received the original and the Mayor of Chester has the original.

THE COURT: Alright sir. Your objection is well taken and you'll have the opportunity to cross-examine the witness.

MR. MANNING: I'd like a ruling on my objection.

THE COURT: The objection overruled. The witness has stated what it is. You'll have the opportunity to cross examine him on your questions as to that.

MR. MANNING: Your Honor, I have the priveledge with respect to that because in respect I presented to you. This is the

original.

THE COURT: You'll have the opportunity to go into that.

MR. FUNKHOUSER: We would like for this to be submitted as evidence, your Honor.

THE COURT: Alright sir. Please move forward.

MR. FUNKHOUSER: We have a copy. We would like to substitute.

THE COURT: Show it to Mr. Manning.

MR. FUNKHOUSER: Let the records show that I am showing him a copy and the original.

MR. MANNING: Your Honor, I would submit, I would ask that this original here be kept by the Court in as much as my objection being centered around the original. We would like for this to be made a part of the permanent record. Now if he wants to introduce this copy if he wants to. This original, I want it to be made a part of the permanent record of this Court.

THE COURT: The Court will keep this original.

Q. (By Mr. Manning) Mayor Funderburk, would you please identify this?

A. Yes sir.

MR. MANNING: I object.

THE COURT: What's the bases for your objection?

MR. MANNING: Your Honor, if he's going to read any part of that, I'd object to that.

Q. (By Mr. Funkhouser) Please identify it.

A. This is a copy of an application made by Mr. Golden Frinks for a parade permit.

Q. Is that a copy of the application for which the denial is the question of?

A. Yes sir.

MR. MANNING: Your Honor, I would object to that.

THE COURT: Objection.

MR. FUNKHOUSER: I'm only having him identify it, your Honor.

THE COURT: Alright sir. Let's move forward.

Q. (By Mr. Funkhouser) Have you recognized this to be substantially the application for the permit which you received for which the denial was made?

MR. MANNING: Your Honor, I would object to that question. It has to be the particular one, not substantially the same.

Q. (By Mr. Funkhouser) Is this a copy of the same one.

A. Yes sir.

MR. MANNING: Your Honor, I would like to see the original and I would object to any copies being introduced as evidence.

MR. FUNKHOUSER: Your Honor, he's identified it.

MR. MANNING: I'm sorry.

THE COURT: What is the bases for your objection?

MR. MANNING: Our rule on evidence is that, no copies, when the original is available--Certainly if he's the Mayor, they have a record keeping system and he should have the original and we would object to anything because the best evidence

rule dictates the original.
THE COURT: What do you have to say about that Mr. Funkhouser?
MR. FUNKHOUSER: If it please the Court, if the Mayor has available the original, we will submit the original.
MR. MANNING: We would object to anything other than the original.
THE COURT: Alright sir.
Q. (By Funkhouser) Mayor Funderburk, do you have the original?
A. I would hope that it is in the City Hall.
MR. FUNKHOUSER: Your Honor, we would submit this into evidence.
THE COURT: What do you say about the best evidence rule?
MR. FUNKHOUSER: The best evidence rule -- Actually there is no best evidence rule as the original under the best evidence rule. The best evidence rule is a rule in which documentary evidence which is true and what it reports to be. We have a qualified witness to identify this to be a copy of that request for application. I would submit that this application be submitted into evidence, which has been identified by the Mayor.
THE COURT: What do you have to say about that?
MR. MANNING: Your Honor, I understand that the best evidence rule, as your Honor is well aware, that the best evidence rule states that if the original is available, and

he just stated that it was submitted to him. He has a record keeping system in the City of Chester and he does not have the original. We submit that based on the best evidence rule, no substitute, no copies can be introduced into evidence.

THE COURT: What do you say about the witness identifying the piece of paper?

MR. MANNING: My argument is the same, your Honor. We want to see the original. He has the original here as well as the copy as apparently Mr. Frinks should have.

THE COURT: Alright sir. What is your arguments?

MR. FUNKHOUSER: If the Mayor recornizes, in my opinion, the subject who presented the application to be that of the original, he can now read from it. Let this be read into evidence. If the originality of the document is actually in question we will simply have him read what he received in the application for a permit. We won't submit the document. We believe that the original document is important certainly. When we're talking about something like an application for a permit, it is not exactly the form that is important, but the subject of that application. Now, if counsel opposes this, he is evvect opposing anything that could be the bases for his argument in this whole case. Because if he opposes the substance of the application for a permit then it is just that no application was submitted in the court room.

Now simply, if he wants to set his case down like that and your Honor rules against me. I think that it is properly introduced into evidence.

MR. MANNING: Your Honor, it is not properly introduced into evidence. It cannot be properly introduced into evidence. It wasn't a question that you raised--whether it was properly introduced into evidence. That has been taken care of. The Mayor admitted that he received an application and that he denied it. Also, we'll say that unless he can produce the original he cannot introduce this as evidence. That's all I'm saying.

MR. FUNKHOUSER: If their is an original your Honor, we'll submit it.

MR. MANNING: Your Honor, I'll object unless they can present it now. No way substitution is allowed under the rule of evidence. That's the purpose of having you here. Rule on the admissibility of the evidence at this time.

THE COURT: Can you make that available?

MR. MANNING: Your Honor, I would object to any delay on this particular question because I tried at the beginning to lay the foundation for proceeding with this and you overruled. We would object to my introduction of any documents unless they are the original.

MR. FUNKHOUSER: We so submit it your Honor and wait on the ruling of the Court.

MR. MANNING: Your Honor, the Court did not even read that or even consider that because you are the one who has to rule on this matter andyou should not, I well, I submit to you that you should not be reading that. It's not properly before you.

THE COURT: I'll note your objection.

MR. MANNING: I would certainly like to enter into the record that you have read that document before it was submitted.

THE COURT: It's so noted in the record.

MR. MANNING: Are you in effect admitting that into evidence?

THE COURT: No sir, I haven't ruled on it.

MR. MANNING: But, your honor, you've already read it.

THE COURT: Well, I think that this Court has a right and it is its duty to look at any document that comes before this Court and decide on the admissibility of it. It appears to me that this Court is the Court that decides the matter. That this Court again recognizes the dangers of particular evidence. This Court will allow the introduction of this.

MR. MANNING: I object.

THE COURT: This Court notes your objection. Let's move forward with your questioning.

Q. (By Mr. Funkhouser) Mayor Funderburk, are these statements in the paper, statements of yourself or statements of the City Council?

A. They are my statements. The City Council had nothing to do with it.

Q. Then you're not saying that the City Council ruled and denied their application because of what you had said in this statement.

A. No. that's absurd. The City Council is composed of eight men and myself. The City Council, when they received the application from Mr. Golden Frinks, the City Council met and considered Mr. Frink's application on its merit.

Q. Would you please recite exactly what the reason for denying that permit?

A. "Your application for a permit to hold a parade in the City of Chester on Sunday, November 11, 1979 on a route designated in your application is denied.

An assembly of Veterans and other citizens has previously been scheduled to be held at the Chester County Courthouse on November 11, 1979, to conduct traditional ceremonies in annual observance of Veteran's Day. The route of the parade proposed in your application would terminate at the same location at approximately the same time and a disruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community.

To protect the public welfare in the City of Chester and to avoid the present danger to life, liberty and pro -

perty, your application to conduct a parade in Chester under the circumstances now existing which have produced a volatile atmosphere in this City, is denied."

MR. MANNING: I would like the Court to note that Mayor Funderburk is reading from the original.

THE COURT: Alright sir.

Q. (By Mr. Funkhouser) Mayor Funderburk, isn' it true that there was three marches held? Isn't that correct?

MR. MANNING: Your Honor, He's leading the witness.

MR. FUNKHOUSER: He's not my witness. I'm on cross-examination.

THE COURT: Don't talk to each other. Restate the question.

MR. FUNKHOUSER: Your Honor, I'm on cross-examination. He has stated repeatedly that that is his witness. It is not my witness and under the rules of cross-examination and direct-examination, I can ask the question that I have.

MR. MANNING: I object. He is my witness. Eventhough he went and elicited information that I was told was not in evidence and you admitted it into evidence. Now if he is my witness, the only thing he can go into is things that I brought out. Now if I did ask him about a letter and a reason and why the thing was denied, he certainly cannot go into it on cross. Especially going into the folder. I think that the Court needs to take notice in the peculiar situation that we have here. The Mayor as well as the City

Council and/or the City of Chester, although I called him to elicit information from, he's a hostile witness to the Defendants and I think that the Court has to move on sound judicial turf in a situation like this here. Now obviously the Attorney General's Office had corroborated with this particular witness otherwise he would not have known about the original letter that he elicited from his folder just now. And I submit to you that the questioning the Mayor that which the question is being elicited from the Mayor, I think that the Court needs to make a notation in the record that he is a hostile witness and he is not my witness as of he is eluded as to all I told him, because of the serious situation. The Mayor, the City Council and the City of Chester is the one who denied the permit. They are the ones in effect who had these individuals arrested acting on their own.

MR. FUNKHOUSER: Your Honor, I object to the statement that they are the ones that had these persons arrested. We move that it is unprofessional and should be stricken from the record.

THE COURT: Alright, your objection has been taken. Mr. Funkhouser can you ask the question another way.

MR. FUNKHOUSER: I'll restate the question, your Honor.

Q. (By Mr. Funkhouser) Mayor Funderburk how many times has there been parades or demostrations of this type

concerning these persons.

A. Three or four..

Q. How many were conducted inside the City Limits of Chester? How many of those demostrations were conducted in the City of Chester?

A. Three if I remember correctly.

Q. At that time did the situation that was existing on November 11, exist on those previous occasions?

A. No sir.

Q. And on those three previous occasions according to your recollection did you grant an application by this individual to conduct a demostration or parade?

A. Yes sir.

Q. That's all the questions I have.

MR. MANNING: I just have a couple questions.

Q. (By Mr. Manning) Do you assist in the decision making process of the council?

A. We have a council form of government.

Q.. You mean Mayor-council.

A. Mayor-council.

Q. So you do sit in on the decision making is that correct? And you also assist in the Decisions.

A. I do.

Q. Now let me ask this question here. The three permits that were issued, were issued prior to your statements. Is

that correct?
A. Yes sir.
MR. MANNING: No further questions.
THE COURT: I'd ask this witness--
MR. MANNING: I have just one other question.
MR. FUNKHOUSER: Your Honor, I object.
MR. MANNING: I just have one more question. You have not released this witness and I said I have one more question to ask.
THE COURT: I'll allow one more question.
MR. MANNING: Thank you your Honor.
Q. (By Mr. Manning) Mayor Funderburk, I show you an original here with your signature on the bottom. Do you recognize this?
A. I do.
Q. Would you tell us what this is?
A. That's a parade permit addressed to Bill Stringfellow granting a parade permit for Saturday, December 1.
MR. MANNING: Thank you.
MR. FUNKHOUSER: Your Honor, he is submitted this into evidence and I assume that he is. I don't see what relevance this document has to this particular case and testimony. I would object. It's irrelevant.
THE COURT: Would you tie it in Mr. Manning?
MR. MANNING: Yes, your Honor. Like I said before this was

sent to Mr. Funderburk and this is the original.

Q. (By Mr. Manning) Is that correct?

A. It is an original. I would say that it looks like the original.

Q. Look at it again. Is that your signature?

A. That is my signature. There's no question about that.

Q. So this letter that I'm holding is an original.

A. Right.

MR. MANNING: That's all. I just want the Court to recognize the fact that this is an original letter dated November 29 and that it went to Mr. Frinks.

THE COURT: The Court recognizes the point that you have made. Now if there is no objection to the witness being excused from the area. We certainly do appreciate you coming. Call your next witness.

MR. MANNING: Your Honor I have no further witnesses to call. You may excuse them to go.

THE COURT: Officer, would you dismiss the other witnesses.

MR. FUNKHOUSER: Your Honor, before the Court excuses the witnesses, I may want to call one other council member.

MR. MANNING: Your Honor, he cannot do that for the simple reason that I am the moving party. He has to rebuttal my argument. If I don't submit any testimony he certainly cannot produce any and he knows that.

THE COURT: What is your position on that Mr. Funkhouser?

MR. FUNKHOUSER: Your Honor, he's right. I haven't had any rebuttal, so I haven't had the opportunity to rebut. So the only way I can do that is with testimony.

MR. MANNING: No, your Honor, he cannot, not when we're arguing. He cannot.

THE COURT: I don't understand that to be the law Mr. Manning. If he has some information to bring before this Court that will shed some light on this matter, I think that he should be allowed to present that at this time in the arguments.

MR. MANNING: Your Honor.

THE COURT: State your position on that Mr. Manning. Why shouldn't he be allowed to present evidence?

MR. MANNING: For the same reason you would not allow me to present evidence on Number A.

THE COURT: Nobody said you could not present evidence, Mr. Manning.

MR. MANNING: You wouldn't let me present any testimony as to A.

THE COURT: Well, I am sorry that you've got that idea.

MR. MANNING: In the records you would not let me produce the evidence.

THE COURT: Do you have any other testimony with respect to B.

MR. MANNING: No testimony at all. I have legal arguments for B & C. That's all. As such, he cannot call for any

testimony because I am the moving party.

THE COURT: I understand your position Mr. Manning. What is your position Mr. Funkhouser?

MR. FUNKHOUSER: Your Honor, my position simply is that any testimony that relates to this issue, the State is entitled to present evidence on the issue in the order that we are moving with A, B & C.

THE COURT: This Court will accept the position of Mr. Funkhouser. This Court certainly notes your objection to any witness that he may call. I understand that you are objecting to any witness that he may call. This Court will note that in the record that it is taking.

MR. MANNING: Your Honor, I would just like to ask one question. Is Mr. Funkhouser's testimony going to involve anything other than B?

THE COURT: No sir. I understand that it will not involve any other matter. We are now determining the constitutionality of this order as applied. This Court will now receive evidence on that matter. You have stated that you have no more witnesses to call on that matter. Now Mr. Funkhouser has indicated that he has a witness with respect to evidence on this matter.

MR. MANNING: Your Honor, if that is the case then and it certainly appears to me that a double standard is being applied here.

THE COURT: Well, I'm sorry that you feel this way and your objection is certainly noted. It is not the feeling of this Court. The intent of this Court is to run an orderly procedure-a fair procedure to all parties. That is the intent of this Court and this Court has the duty to keep it in order and this Court has the judicial procedure in these matters. This Court has the duty to be fair to all parties and that's exactly what this Court is trying to do. The Court is sorry that you have the understanding that you do. So at this time if you have no more witnesses on this matter, I ask that if Mr. Funkhouser has any evidence to bring before this Court on this matter.

MR. FUNKHOUSER: Your Honor, at this time in the interest of the irrelevancy of testimony being introduced by all the council members. I would submit testimony that the council members met and decided on the grounds which were stated in this letter --

MR. MANNING: Your Honor.

MR. FUNKHOUSER: Excuse me.

THE COURT: Let him finish.

MR. FUNKHOUSER: They denied that permit as council members.

MR. MANNING: Your Honor, what I'm saying-- You don't have a jury. He is telling you what they are going to introduce. That should not be brought before you unless it comes out of the witness' mouth.

THE COURT: He's laying this proper and he intends to do that.

MR. MANNING: I would suggest that we'd proceed with the testimony before arguing on his part.

MR. FUNKHOUSER: It's all in the same your Honor.

THE COURT: He's presenting evidence at this time.

MR. MANNING: What he says and what I say is not evidence.

THE COURT: Exactly. He has presented no evidence.

MR. MANNING: Yes, but you're hearing what he's saying.

THE COURT: As you understand, Mr. Manning and as I understand that problem exists in all of these type matters. So would you ask Mr. Lee to come in.

JOSEPH EDWARD LEE

A witness, who after being duly sworn, testifies as follows:

DIRECT EXAMINATION

Q. (By Mr. Funkhouser) You're Mr. Eddie Lee, is that correct?

A. That is correct.

Q. Where do you reside?

A. I reside on Town and Country Lane.

Q. Is that in Chester County?

A. It is in the City of Chester.

Q. What if any, political office, do you hold in Chester?

A. I'm a Chester City Councilman.

Q. I call your attention to this particular application for a permit to parade in the City of Chester. I ask you if you recognize that?

A. Yes sir, I do recall this.

Q. For what date was that application made?

A. For Veterans Day, November 11.

Q. Who requested that?

A. It was signed by Mr. Golden Frinks.

Q. Who did he sign it on behalf of?

A. Field Secretary of the Southern Christian Leadership Conference and Chester Movement for Justice.

Q. Now, did the City Council have the occassion to consider that application?

A. It was considered.

Q. On what day was it considered?

A. A few days before then. I believe that it must have been the 9th or 10th.

Q. What was the result of your considering that application?

A. We considered it but we realized that--

MR. MANNING: Your Honor, I would object unless he said that I took part in considering it for the simple reason that-- That is hearsay.

THE COURT: I'll agree with that.

Q. (By Mr. Funkhouser) Did you take part in considering

the application?

A. I took part in considering it.

Q. As a council member?

A. As a council member.

Q. What was the reason? What was the result of that consideration?

MR. MANNING: Your Honor

Q. (By Mr. Funkhouser) I'll rephrase the question. Did the council vote regarding considering this application?

A. The council considered the application. Each of us individually and we voted--

MR. MANNING: I object. He can only talk about what he has done.

THE COURT: I agree with your statement Mr. Manning. I ask Mr. Funkhouser to only direct your questioning to Mr. Lee as to what he saw and what he personally did.

Q. (By Mr. Funkhouser) When the application was considered did you observe the voting on that application?

MR. MANNING: I object to that. He can say whether he voted or not, that's all.

MR. FUNKHOUSER: That's not true.

THE COURT: Can't he indicate that he was sitting there and if there was some sort of voting yea or nay show of hands? Can't he indicate what he saw?

MR. MANNING: If he presents the minutes of the meeting, yes.

THE COURT: He was there.

MR. MANNING: He can testify as to the exact part he took place in. We've got all the other council members. If he wants to call all of them, let him do so. He can only ask him about his part in it.

THE COURT: Please answer this question, Mr. Manning. Why can't he testify as to what he observed? What his eyes saw or what his ears heard at the meeting? If everybody raised their hands or said yea or nay to a particular motion. Why can't he testify as to wht he saw there? Why can't he do that?

MR. MANNING: He can testify to what he saw there your Honor, but he cannot tell who voted which way or anything like that because that is hearsay?

THE COURT: I agree with that. If he saw somebody raise their hand for a particular motion why can't he testify as to what he saw as long as it is perfectly clear that what we're talking about is what he saw?

MR. MANNING: Your Honor for the simple reason we do have minutes that should be available in a situation like this one here. Now again we get back to the best evidence. If you have minutes, an official record of what was transcribed, let them produce the record. That is the bases of my objection based on the best evidence. Now again if you're going to let him come in and testify what went on and every-

thing. We have official minutes, suppose to anyway. Why aren't they here? Why didn't he bring those? That's what we're talking about. We're talking about a bases of producing or presenting evidence in Court. Now, unlike a street fight at a gambling house or at a pool joint or somebody in an automobile accident. That's a totally different kind of situation. We're talking about a closely confined situation whereby we have official records. Now, if someone brought the minutes in and the Mayor or whoever said that these are minutes. I don't care how much I object to that. That could be introduced into evidence because it is part of the permanent record keeping system of the City of Chester. Given the fact that we do have that kind of system, his testimony is hearsay in view of respect of anything that he personally took part in.

THE COURT: Al right sir. As I understand the bases for your objection is the best evidence rule. Is that correct?

MR. MANNING: Yes sir.

THE COURT: What do you say about that Mr. Funkhouser?

MR. FUNKHOUSER: Your Honor, the best evidence is what this man saw and heard. He's a council member. He was present. He's a witness to all these events. He knows why the council acted as it did. I would suggest that council is trying to prevent anything which may be harmful to his defense. Not only is it unduly prejudicial or legally prejudicial. As to

the fact as to what he did and only what he said is not true. Hearsay rule is outward statement spoken by one party introduced through the matter of service. That is not what we're trying to prove here. What we're trying to prove here is what he observed? What he saw of the voting and what the decision was of the council members?

THE COURT: This Court understands that this witness is only going to testify as to what he saw. This Court notes your objection Mr. Manning. I think it's well taken. But I fail to see how you or anyone can be prejudice by what this particular person saw and heard. I'm going to allow him to ask questions as to what he saw and heard. This Court notes your objection to testimony.

Q. (By Mr. Funkhouser) You observed the voting of the council. Is that correct?

A. I did.

Q. Is it also correct that the application--

MR. MANNING: He's leading the witness.

Q. (By Mr. Funkhouser) What was the decision of the council on the application of the permit?

A. The application was denied on the grounds that a Veteran's Day Commemoration was going to be held at the same site on that same day and this Veteran's Day ceremony had been advertised previously in the media and everyone was aware of it.

MR. FUNKHOUSER: No further questions.

CROSS EXAMINATION

Q. (By Mr. Manning) Mr. Lee, I only have a few questions As a bases for denying the permit, it is stated here in a letter dated November 10, 1979--let me remind you that this is the original--that it is addressed to Mr. Golden Brinks and reading from paragraph 2, second sentence it says: "The route of the parade proposed in your application would terminate at the same location at approximately the same time and a discruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community." Now, have you set in on all the meetings in respect to the applications?

A. Yes sir.

Q. You live here in the City of Chester.

A. Yes.

Q. Up until this point have all the demostrations been peaceful and in accordance with the way that they stated they would be?

A. Yes sir.

Q. Let me ask you this question. Why--What bases do you have for thinking or suggesting that "a disruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community"? What bases do you rely on in arriving at that particular statement?

A. It was suppose to commemorate all the Veterans who died and crosses were located--

MR. MANNING: You did not answer the question.

MR. FUNKHOUSER: I think he is your Honor.

THE COURT: Let him finish.

MR. MANNING: But your Honor, he is not answering the question.

THE COURT: We'll decide when he gets through whether he's answered the question or not.

A. And crosses were located across the courthouse lawns and down the Memorial Building lawn. Those crosses had names of Veterans who had died from Chester County and it was our feeling that they had died in the defense of their county and that a disruptive event could take place with people who did not take the matter seriously.

Q. Let me ask you this here. Based on what you just said, are you suggesting that the marchers would not have taken the persons who died seriously.

A. I really did not know how they would take it.

Q. OK I have no further questions.

MR. FUNKHOUSER: None from the State. Your Honor, that's all we have.

THE COURT: Al right. I take it now that there is no objection that the members who are here that have been subpeoned of the City Council, can leave. Is that correct?

MR. MANNING: Yes.

Thank you for coming Mr. Lee. You can leave now. If you would instruct the others that they can leave.

THE COURT: As I understand it, Mr. Manning, the Court is now allowing you to present evidence. You have no more evidence to present on the matter of the application of the statute. Is that correct? Can we proceed with arguments? So if you'll proceed with arguments based on the application of the statute in this case. Are you ready to proceed Mr. Funkhouser?

MR. FUNKHOUSER: Yes sir, your Honor.

THE COURT: Al right. Proceed Mr. Manning.

MR. MANNING: Your Honor, I would like to call Rev. Fred Taylor to the stand please.

THE COURT: Al right sir. Come forward.

FRED D. TAYLOR

A witness, who after being duly sworn, testifies as follows:

DIRECTION EXAMINATION

Q. (By Mr. Manning) Rev. Taylor were you one of the demostrators that were arrested on November 11?

A. Yes I was.

Q. Let me ask this question here. What is your official capacity?

A. My official capacity is Director of Chapters and Affiliates for the Southern Christian Leadership Conference based in Atlanta, Georgia.

Q. Now, you've heard testimony and I ask you if you were involved in three marches prior to November 11?
A. Yes, I was involved in all three.
Q. What was the bases of those demostrations?
A. The bases for those demostrations was to direct our grievences which we felt were apparant here in the City of Chester in relation to the unjustice done to black people here.
Q. As it relates to Chester?
A. That is correct.
Q. Now, you states that you had marched in the three previous marches. At any time in those three marches prior to November 11 was there any disturbances involving these marches.
A. No. I didn't hear of any.
Q. And you were an active participant in all three?
A. Yes. I was an active participant and I also was an organizer in all three.
Q. Now, on November 11 of this year 1979, you were also involved in that particular demostration. Is that correct?
A. Yes I was.
Q. Let me ask you this here. Where did that particular march begin?
A. It began right outside the City limits, at the grave-site where Mickey McClinton was buried in the County of

Chester.

Q. To the best of your knowledge, approximately how many miles is the gravesite from the City limits?

A. I have been told that the distance of the gravesite from the City limits of Chester is two miles.

Q. Approximately?

A. Approximately two miles.

Q. O.K. Now, did you secure a permit to march from the State of South Carolina from that point up to the City of Chester?

A. No, we did not, but we had the protection of County and State officials.

Q. The State highway?

A. That is correct and the Sheriff's office--Sheriff Orr.

Q. So, there was ample police protection?

A. In my judgment, it was more than ample.

Q. Now, from the gravesite up to the City Limits was there any disruption at all during that day? We're talking about November 11.

A. None whatsoever. It was a very peaceful, non violent march in my judgment.

Q. I call your attention to this news article here. Are you familar with that?

A. Yes, I am familar with that. I remember reading it in the local paper.

Q. Now, up to that point and time you had received permits from the City of Chester to demostrate. Is that correct?

A. Yes we had received three permits up until that time.

Q. I would like for the record to show that Rev. Taylor has eluded to the statement from the local paper that was issued by the Mayor of Chester. So up to that point you had no trouble attaining a permit. Is that correct?

A. No, none whatsoever.

Q. Is this the same statement wherein Mayor Funderburk stated he would not issue any more permits as long as Golden Frinks and other members of the SCLC were involved.

MR. FUNKHOUSER: Your Honor, he is leading this witness right now. He is supplyinghim with testimony.

THE COURT: Alright.

MR. MANNING: That is not leading the witness your honor.

THE COURT: I think that's been bone into enough. I'll allow him to ask that question.

Q. (By Mr. Manning) My question is. Is this the same statement where Mayor Funderburk stated that the Chester City Council would consider their request for a permit, but there would be no more permits issued where Golden Frinks or the Communist Party is allowed to be involved in any parade and so forth?

A. Yes this is the same statement.

Q. You were arrested on November 11, right?
A. Yes I was.
Q. What reason was given for your arrest?
A. I was not given a reason for being arrested. The only thing I remember was walking into the City limits of Chester and being grabbed by an officer and hauled off to jail. I wasn't given a reason.
THE COURT: Order in the Court.
A. I am serious counselor. I was not given a reason.
Q. What reason do you think you were arrested?
A. The reason why I think I was arrested is because I was marching without a permit. The denial of the permit was a denial in my opinion of my right to express my grievances. I think that the denial was in violation of my constitutional rights.
Q. I have no further questions at this time.
THE COURT: Thank you.
MR. MANNING: Answer any questions that Mr. Funkhouser may have.

CROSS EXAMINATION

Q. (By Mr. Funkhouser) Rev. Taylor, would you please state what your grievances were in this particular matter?
A. 1. I felt that the City of Chester and the County of Chester has not done all they should do or should have done as relates to the investigation into the death of Mickey

McClinton. 2. I was marching in the City of Chester because I am in favor of the single voting district apparant in this County. 3. I feel as though black people are not given a fair chance or share of the jobs in City Hall and in the business of the community.

Q. You organized, in effect, so you could present these grievances. Isn't that correct?

A. That's what you say.

Q. Just tell me if that's true?

A. That is not correct.

Q. How many people were involved in this particular march?

A. Counselor, I really don't know to be honest with you. I have no idea but it was more than one.

Q. Would it be about 50 people?

A. Don't make me lie. I'm under oath. I don't know.

Q. Approximately?

MR. MANNING: He said he didn't know.

A. I don't know counselor.

THE COURT: Don't talk to each other. Talk to the Court.

Q. So, there was you marching in this march?

A. Yes sir.

Q. Was there a group of people?

A. I was marching in the march.

Q. Was there a group of people marching?

MR. MANNING: Your Honor

A. What do you mean by a group?

THE COURT: Just answer the question Mr. Taylor.

MR. MANNING: He's already answered.

A. Would you state the question again counselor?

Q. Was it a group of people there?

A. By a group what do you mean. I don't understand.

Q. Other people.

A. It was more than one.

Q. Was it more than two?

A. Perhaps.

Q. Was it more than thirty-five?

A. I don't know how many people was there.

Q. There are thirty-five people here.

A. It was more than one. My testimony is that I marched in a group of more than one.

Q. You know that there are thirty-five defendants which were arrested in this case.

MR. MANNING: Your Honor, we would object.

THE COURT: What is this leading to?

MR. FUNKHOUSER: He's is trying to get cagey. This witness is trying to get coy with me and talking about there being more than one when he knows that there was a group of people. All I'm trying to elicit is a straight forward answer on that particular time.

MR. MANNING: Your Honor, there has been no testimony as to that. He said that he didn't know how many was in the group. He stated that he was one of a group. Now, if the State knows how many were in there or knows how many were arrested, that doesn't mean that this defendant knows no.

MR. FUNKHOUSER: I am asking him.

MR. MANNING: He said no.

THE COURT: I believe that he did answer that. If you have an estimate, could you ask him if that number was in the group? Just ask him that.

Q. (By Mr. Funkhouser) Were there thirty-five people or more in the group?

A. I have no idea as to how many.

THE COURT: The Court will accept that as an aswer.

Q. (BY Mr. Funkhouser) You did organize this. That was your testimony previously.

A. I was one of the organizers of the movement here in Chester.

Q. Of the demostration too,is that not correct?

A. Which is a part of the movement. I am an organizer--

Q. Please answer my question. I appreciate everything else, but I'd like---

MR. MANNING: Your Honor, I think that he is answering the question. What counselor is tryirg to do is make him elude to a specific part as proposed to him expressing himself

based on the question as addressed to him.
THE COURT: Restate the question.
Q. (By Mr. Funkhouser) My question, Rev. Taylor is that you assisted in organizing the marches. Is that correct?
A. Yes I did.
Q. This march was merely a demostiation to show support for your grievances.
A. Which I stated earlies, yes.
Q. The grievances which you pointed out. Is that correct?
A. Yes.
Q. Now you didnt intend to do anything different in this march that you did in the other previous marches?
A. I don't understand. What I had intended to do in the march on November 11 was to start at the gravesite and march to the City of Chester culminating at the County Court House. That's what I did at the first march, second march and third march and if I had been permitted to. Those were my intentions on November 11.
Q. At any point were you advised that the City Council had denied the application for marching?
MR. MANNING: Your Honor, I would object to that. What he is showing him is not even addressed to him. He is not in a position to even address that to him.
THE COURT: I think that he can answer the question that he is about to ask.

MR. MANNING: No, he's saying whether or not he was advised by the City. That's the question.

Q. (By Mr. Funkhouser) Were you advised by the City?

A. No, I was not advised by any city official.

Q. Did anybody in the march tell you that the permit had been denied?

A. Nobody to my knowledge. I read in the paper where the Mayor said that he was not going to give any more permits for a march. I read that in the paper.

Q. As far as you knew, from the moment you walked into the Chester City limits, you didn't know anything about the fact that the permit had not been issued.

A. I walked into the City limits on that Thursday, prior to this Sunday--

THE COURT: Let him answer the question.

A. I was not aware of the denial of the permit when I walked into the City limits of Chester on that Thursday prior to the date of events. But I was aware of an application having been filed.

Q. Were you aware of a permit being granted?

A. I was aware of a request for a permit.

Q. Were you aware of a permit being given to the group on that day?

A. Was I aware of a permit? I'm aware of an application being filed pending a position.

THE COURT: Are you asking him whether he knew whether or not a permit had been issued on that date?
MR. FUNKHOUSER: Yes sir.
THE COURT: Would you answer that question?
A. No, I wasn't aware.
Q. You were marching on that day and you were going to parade through the streets of Chester. Is that correct?
A. Would you ask the question again?
Q. You were going to parade, with a group of people through Chester, City of Chester to demostrate with a group. Is that correct?
A. In view of the fact that I had ask for a permit.
Q. Yes or no.
A. Those were my intentions to march.
Q. Through the City of Chester?
A. Yes.
Q. You knew of no permit when you marched through the City of Chester, Is that correct?
A. I knew of none.
Q. But on the previous marches, you knew of a permit being issued.
MR. MANNING: He's leading.
MR. FUNKHOUSER: And I'm on cross examination.
THE COURT: I'll allow that question. Just answer yes or no.
Q. (By Mr. Funkhouser) And you knew on the previous

marches that there was a permit.

A. Yes I did.

THE COURT: May I ask where this is leading. What does it have to do with the motion before us?

MR. FUNKHOUSER: Your Honor, I hate to play my hand before I actually ask the question. But I want to get into exactly what the tenor of the procession is.

THE COURT: I'm trying to determine how that effects what went on concerning the council decision.

Q. (By Mr. Funkhouser) Were you aware that there was another demostration on that day?

A. No, I was not aware of that.

Q. Were you treated courteously by City and County officials?

A. I was treated courteously at the beginning of the march. But when I got into the City limits of Chester, I was jerked and pulled off to jail.

THE COURT: Do you have any other questions?

Q. (By Mr. Funkhouser) And on that day you got no opposition from the people of the City of Chester. Is that correct?

A. I got some opposition from the City of Chester and the State of South Carolina because they took me to jail.

Q. Who were they?

A. Man, I don't know all the names ---

Q. Were they police officers?

A. Police officers, Sled.

MR. FLNNRCUSER: That's all the questions I have.

THE COURT: Thank you. Do you have any other questions?

Q. (By Manning) Why do you think the permit was denied?

A. Because of our philosophy or beliefs and I feel that is why.

THE COURT: Rev. Taylor, were you aware of--

MR. MANNING: Your Honor.

THE COURT: Do you have an objection to me asking a question? Go ahead and state your objection.

MR. MANNING: Could this go off the record?

THE COURT: Alright. Do you have any other questions?

MR. MANNING: No that's all.

THE COURT: You may be excused. Do you have any other witness?

MR. MANNING: I would like to proceed with my arguments in respect to Number 2.

THE COURT: OK

ARGUMENTS OF COUNSEL
(As to ground B)

ARGUMENTS OF COUNSEL
(As to ground C)

HEARING IS ADJOURNED

James T. Funderburk, Mayor
E. W. Brunson, Jr., Mayor Pro Tem

Councilmen
Walker M. Bridges
William A. Cranford
Heyward M. Doster
Jesse W. Grant
W. F. Pope
A. H. Robbins
Richard Stevens

W. Penn Colvin, City Manager
Gwendolyn H. Osment, Tax Collector

CITY OF CHESTER

CHESTER, S. C. 29706

November 10, 1979

TO: Mr. Golden Frinks,
Field Secretary
SCLC

Your application for a permit to hold a parade in the City of Chester on Sunday, November 11, 1979 on a route designated in your application is denied.

An assembly of Veterans and other citizens has previously been scheduled to be held at the Chester County Courthouse on November 11, 1979, to conduct traditional ceremonies in annual observance of Veterans Day. The route of the parade proposed in your application would terminate at the same location at approximately the same time and a disruptive consequence is likely to occur, thereby endangering the peace and tranquility of the community.

To protect the public welfare in the City of Chester and to avoid the present danger to life, liberty and property, your application to conduct a parade in Chester under the circumstances now existing which have produced a volatile atmosphere in this city, is denied.

Sincerely yours,

James T. Funderburk

James T. Funderburk
Mayor of Chester

S Document #1

EVENING

Our 102nd year

Tuesday, Nov. 6, 1979

'Enough'

Chester mayor blasts Frinks

Following is a statement issued today by Chester Mayor James T. Funderburk:

"Dear Chester citizens and news media:

Recently, as published in your newspaper, the citizens of Chester County, all races, and the county as such, have been the target of malicious and false accusations.

Funderburk

The death of 18-year-old Mickey McClinton saddened people in this area. People were concerned when rumors flew that he may have been murdered. The charges which resulted in the exhuming of his body were inspired by a contemptible outsider who has since admitted he knew the charges were false.

This makes his message in Chester clear. He does not seek truth and justice, he seeks division and hate. What disturbs us is that the mortician made no public statement until after he had accompanied the accuser to the high office of governor of South Carolina, claiming foul play of the worst kind.

Frinks and his SCLC were greeted with dignity, accorded a respective hearing, and given full cooperation all the way to the governor's office. Now it is clear that Frinks didn't want the truth when even after the second autopsy proved what the mortician, sheriff, and coroner knew, that the body bore no evidence of castration, gunshot wounds or rope burns and so forth. Frinks continued to talk of castration even after he was convinced it was not the truth. The more he talked, the thinner became the ice on which he stood.

Chester has the finest people in all the world, and our people consider it outrageous that Communist Party people were in our city this past Saturday. We have had enough. If our Chester citizens want to march, then the Chester City Council will consider their request for a permit, but there will be no more permits issued where Golden Frinks or the Communist Party is allowed to be involved in any parades and so forth.

The good name of Chester has been tarnished and slandered by the outsiders who participated in this despicable defamation. The NAACP, on the other hand, is to be praised for its integrity of position, having the courage to stand for what was obvious and right. One of the participants has now had the courage to say he was wrong, and he joins with me in ostracizing communism or anything connected with the Communist Party in our city.

Ninety percent or more of all races in Chester deplore this series of events and the adverse publicity given our community. We are proud of our race relations, enjoy mutual respect across racial lines, and have had no racial problems of consequence, until the lies were told and the publicity-getting activites were set in motion. In retrospect, was South Carolina not also hurt; and how much did this cost South Carolina?

Young McClinton's death was unfortunate. It was a hit-and-run death and criminal. We intend to assist in every way we can to investigate the automobile death. The perpetrators should be brought to justice.

It is our hope and prayer that this statement will be the end of outsiders interferring in Chester and that we in Chester will truly live by the Golden Rule "doing unto others as we would have them do unto us."

TO: THE MAYOR AND CITY MANAGER OF CHESTER, SOUTH CAROLINA

FROM: FIELD SECRETARY, GOLDEN FRINKS, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND THE CHESTER MOVEMENT FOR JUSTICE

SUBJECT: APPLICATION FOR PERMIT PURSUANT TO CHESTER CITY CODE #27-202.

Your attention is invited to our application and request for a permit to stage a parade Sunday November 11, 1979. The parade is to begin on Liberty Road coming onto Highway #9 proceeding to Pinckney Street thence to Center Street to the top of the hill turning onto Main Street proceeding to the courthouse.

Time for beginning of the parade is 3:00 P. M. and the number of participants will range from 100-1,000.

There wil be five vehicles involved and one public address system.

The purpose of the parade is to invite attention to public injustices.

Golden Frinks, Field Secretary

R.H.
366-5141
Ext 223
or 377-1144

STATE OF SOUTH CAROLINA)
IN RECORDER'S COURT
COUNTY OF CHESTER)
The City of Chester,)
vs) ORDER
Addison, et al.)
)

This matter came on before me on December 3, 1979, on motion of Glenn B. Manning, attorney for Defendants, to set aside or dismiss the charges against Defendants upon the grounds that the City of Chester Ordinance 27-201,202, and 203 is unconstitutional on its face and as applied in this particular case. Mr. Manning also challenged the ordinance as unconstitutional because of the thirty (30) day waiting period. After hearing arguments of counsel and receiving testimony and evidence on the application of the ordinance in this case I conclude and rule as follows:

I

City of Chester Ordinance 27-201,202, and 203 is not invalid on its face. This ordinance appears to be materially identical to the ordinance upheld by our Supreme Court against constitutional challenge in City of Darlington vs Stanley 239 S.C. 139 122 S.E. 2nd 207 (1961)

II

City of Chester Ordinance 27-201,202, and 203 is not unconstitutional as applied in this case. While there is evidence before the Court that the Mayor of the City of Chester made statements in opposition to members of a group making application to stage a parade or march, this Court cannot conclude that the City Council, in denying the permit required by the ordinance, acted with the purpose of denying the applicants their constitutionally guaranteed freedom of speech and assembly, rather than with a view "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder." City of Darlington vs Stanley, supra, at 211. It appears that the City Council had knowledge of another assemblage in the path of the proposed march by the applicants. Although the rights of freedom of speech and assembly are fundamental, "they are not in their nature absolute and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order." City of Darlington vs Stanley, supra, at 209.

III

It appears to this Court that at the time the applicants in this case were denied a permit to stage a march or parade by the City Council of the City of Chester, City of Chester Ordinance 27-201,202, and 203 contained no requirement for a thirty (30) day waiting period. It does not appear that the application for a permit in this case was affected by such a requirement. Therefore, this Court refuses to pass upon any such amendment to the ordinance. Even so, such a requirement seems reasonable, and "When a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application." City of Darlington vs Stanley, at 211.

AND IT IS SO ORDERED.

LAMAR H. KELSEY, III
CITY RECORDER

December 6, 1979
Chester, S. C.

STATE OF SOUTH CAROLINA)) COUNTY OF CHESTER)	IN THE COURT OF GENERAL SESSIONS
City of Chester,)) Respondent,)) v.)) Naomi Addison, et al.,)) Appellants.)	ORDER DISMISSING APPEAL CASE NO. # 10391

STATEMENT OF THE CASE

This is an appeal from Appellants' arrest and conviction in the City Court of Chester, South Carolina, for violation of Chester City Code Ordinance Section 27-201, which provides as follows:

> It shall be unlawful for any person or organization to stage a parade or procession on any of the streets or in any other public places within the city without first having applied for and secured a special permit from the council to do so, excepting funeral processions, the armed forces of the U.S. Army or Navy, the military forces of this State and the force for the police and fire departments of the City.

Pre-trial motions on behalf of the defendants were heard by the Honorable Lamar H. Kelsey, III, City Recorder, on December 3, 1979. At that time the Court heard evidence and arguments presented by counsel for the Defendants, Glenn B. Manning, Esq., and counsel for the City of Chester, Lindy P. Funkhouser, Assistant Attorney General, and Wayne G. Carter, Staff Attorney, both of the Office of the South Carolina Attorney General. At that time counsel for the parties to this action agreed to have all thirty-five (35) defendants tried together. On December 6,

1979, the Chester City Recorder issued his Order denying the defendants' pre-trial motions to dismiss the charges. The case was called for trial on December 12, 1979, in Chester, South Carolina, with the Honorable Lamar H. Kelsey, III, City Recorder, presiding, and a jury. On December 13, 1979, the jury returned a verdict of guilty as to all defendants, and the trial judge sentenced each defendant to a fine of $100.00, plus $8.25 court costs or thirty (30) days in jail. Counsel for defendants served his Exceptions and Notice of Intention to Appeal on December 17, 1979. The Return of the Chester City Recorder was filed in the Office of the Clerk of Court for Chester County on February 21, 1980.

This matter was heard before me in chambers in the Chester County Courthouse, Chester, South Carolina, on April 11, 1980, at 10:00 a.m., after counsel for the parties hereto served and filed briefs in support of their respective positions. After a careful consideration of the Record, the briefs and the arguments of counsel on behalf of the parties hereto, this court hereby rules that the appeal should be denied and dismissed.

FACTS OF THE CASE

On three occasions prior to November 11, 1979, the Chester City Council had issued parade permits to Appellants, by and through their representatives of the Southern Christian Leadership Conference and the Chester Movement for Justice. (Tr. p. 37, line 24-p. 38, line 6). The record shows that annual Veteran's Day ceremonies were scheduled to take place at the Chester County Courthouse for November 11, 1979. (Tr. p. 35, lines 3-18). No permit had been issued for the Veteran's Day celebration inasmuch as it involved no parade or procession

through the streets of Chester. On November 6, 1979, Chester Mayor James T. Funderburk issued a statement criticizing one of the defendants in this case, Mr. Golden Frinks, declaring that "there will be no more permits issued where Golden Frinks or the communist party is allowed to be involved in any parades and so forth." (Tr. pp. 18-21). Some time thereafter, prior to November 10, 1979, Mr. Golden Frinks, Field Secretary for the Southern Christian Leadership Conference and the Chester Movement for Justice, issued an application for a permit pursuant to Chester City Code Section 27-202, to stage a parade on Sunday, November 11, in the afternoon, with active participation of 100 to 1,000 people. (Tr. p. 70). On November 10, 1979, the Chester City Council, composed of eight persons, met to consider the application for a parade permit and issued to Mr. Frinks, by and through the Chester City Mayor, a statement denying the application on the grounds that "an assembly of veterans and other citizens has previously been scheduled to be held at the Chester County Courthouse on November 11, 1979, to conduct traditional ceremonies in annual observance of Veteran's Day." (Tr. p. 35, lines 3-18). The City Council, in effect, ruled that the parade and the Veteran's Day ceremonies conflicted in time, place, and purpose. Nevertheless, the defendants did stage a parade or procession on November 11, 1979, at which time they were arrested on Pinckney Street in Chester, South Carolina. (Tr. p. 10, line 24-p. 14, line 1). The record does show that a parade permit was subsequently granted to the

Southern Christian Leadership Conference and the Chester Movement for Justice for December 1, 1979.

The Chester City Mayor had the following comment to make as to the force and effect of his statements to a local newspaper, shown in the Transcript at p. 69, as follows:

> Q. (By Mr. Funkhouser). Mayor Funderburk, are these statements in the paper, statements of yourself or statements of the City Council?
>
> A. They are my statements, the City Council had nothing to do with it.
>
> Q. Then you are not saying that the City Council ruled and denied their application because of what you had said in this statement?
>
> A. No. That's absurd. The City Council is composed of eight men and myself. The City Council, when they received the application from Golden Frinks, the City Council met and considered Mr. Frinks' application on its merit. (Tr. p. 34, line 23-p. 35, line 9).

The trial judge, who considered the testimony and evidence presented at the motion hearing, concluded that the City Council did not act with the purpose of denying the within defendants their constitutionally guaranteed freedom of speech and assembly, but, rather, "with a view 'to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travellers, and to minimize the risk of disorder.'" (Citation omitted). (Tr. p. 77).

CONCLUSIONS OF LAW

The Appellants have argued to this court several exceptions, each of which shall be discussed as follows:

I.

Appellants' claim that Chester City Code Ordinance Sections 27-201, 202, and 203 are facially invalid under Amendments 1 and 14 of the United States Constitution. (Exception 1).

It should be noted at the outset that the applicable provisions of the Chester City Code are substantially the same as those upheld in City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961). It may be reasonably inferred that the Chester Ordinances, adopted on January 8, 1962, were patterned after the statutes considered in City of Darlington. In that case, the Appellants made the same contentions as presented here, namely that:

> 1. The Chester Ordinance is unconstitutional in that it fixes no standard or guide for the granting or denial of a permit and leaves the matter to the uncontrolled will of the City Council.
>
> 2. The Appellants were deprived of their right to freedom of speech and assembly guaranteed by the Constitution of South Carolina and the right of freedom of speech and assembly guaranteed by the First Amendment to the Constitution of the United States.

The United States Supreme Court in Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 471 (1965), while acknowledging the rights of free speech and assembly, noted that such rights do not mean that "everyone with opinions or beliefs to express may address a group at any public place and at any time." The State has a duty to maintain the existence of an organized society and public order, "without which liberty itself would be lost in the excess of anarchy." In a similar vein, the South Carolina Supreme Court in City of Darlington, quoting Mr. Justice Jackson in Kunz v. People of the State of New York, 340 U.S. 290, 95 L.Ed. 280, stated that "cities throughout the country have adopted the permit requirement to control private activities on public streets and for other purposes." The Supreme Court of this State held that, although the rights of freedom of speech and assembly are fundamental, they are not in their nature absolute,

and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. The Court stated in City of Darlington that ordinances approved by City Councils are presumed to have a constitutional rather than unconstitutional purpose in mind. See Powell v. Thomas, 214 S.C. 376, 52 S.E.2d 782. The Court further held that such ordinances will not be declared unconstitutional if, by any reasonable construction, they can be harmonized with the State and Federal Constitutions. See Jones v. Prudential Insurance Company, 210 S.C. 264, 42 S.E.2d 331.

This Court holds, as found in City of Darlington, that the City of Chester ordinance was not designed to suppress in any manner freedom of speech or assembly, but to reasonably regulate the use of the streets in the public interest. It does not seek to control what may be said on the streets either by speech or by writing, and is applicable only to organized formations of persons using the streets and not to individuals or groups who are not engaged in a parade or procession. The City Council of Chester deemed the enactment necessary to preserve the health, welfare, and protection of the citizens of Chester, as well as to maintain law and order. The requirement of Section 27-202 that the applicant for a permit state the time of the proposed parade, the course to be travelled, the number of persons or vehicles involved and the purpose of such permit is to assist the municipal authorities in deciding whether or not the issuance of a permit is consistent with

traffic conditions at any particular time and place. The fact that such detailed information is required to be presented to the City Council negatives Appellants' claim that the power given to that body was to be exercised arbitrarily or for some capricious reason. All of the information required to be furnished is related to the proper regulation of the use of the streets. There is nothing suspect about requiring such information. City of Darlington v. Stanley, supra.

Likewise, there is no merit in the Appellants' claim that the ordinances are invalid because they fix no standard to be observed by the City Council in granting or withholding permits, thereby enabling that body to act arbitrarily. As held in City of Darlington,

> It is true that the general rule in this State, as elsewhere, is that a statute or ordinance which in effect reposes an absolute, unregulated, and undefined discretion in an administrative or public body will not be upheld. (Citations omitted). But, as stated in the Annotation in 92 ALR at page 410, an exception or qualification to this rule is frequently made 'where it is difficult or impracticable to lay down a definite comprehensive rule, or the discretion relates to the administration of a public regulation and is necessary to protect the public morals, health, safety and general welfare.' (Citations omitted). 239 S.C. at 147, 122 S.E.2d at 210.

The Court then went on to state that:

> Due to varying traffic conditions and the complex problems presented in maintaining an orderly flow of traffic over the streets and highways it clearly appears that it would be practically impossible to formulate in an ordinance a uniform plan or system relative to every conceivable parade or procession. The standard to be applied is obvious from the purpose of the ordinance. It would be of little or no value to state that the standard by which the City Council should be guided is the safety, comfort, and convenience of persons using the streets. That is already implicit in the ordinance, as we construe it. The members of the Council may not act as censors of what is to be said or displayed in any parade. If they should act arbitrarily, resort may be had to the Courts. 239 S.C. at 147, 122 S.E.2d at 211.

As to the use of the word "discretion" in the governing body, our Supreme Court held that

> we do not construe this as meaning unfettered discretion but one to be exercised in connection with the safety, public order and convenience in the use of the streets. This construction is fortified by the phrase...which states that the permit shall be issued 'subject to the public convenience and public welfare.' 239 S.C. at 148, 122 S.E.2d at 211.

On this point see also the case of State v. Cox, 91 N.H. 137, 16 A.2d 508, cited in City of Darlington v. Stanley, supra.

It is clear that the above-mentioned statutory construction is in accord with the Constitution of the United States. In Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed.2d 162 (1969), the United States Supreme Court held that municipal permit ordinances-upon which the respective State Supreme Courts have construed and defined the amount of discretion and standards

allowed under such ordinances would pass constitutional muster, so long as the construction of the ordinances occurred prior to an individual's violation of such permit ordinances. The Supreme Court of South Carolina has defined the limits of the discretion allowable to City Councils in the granting or denial of parade permits, and the corresponding standards which serve to guide Councilmen in the exercise of such discretion. Consequently, the Chester City Code Ordinances under attack pass constitutional muster. See also Cox v. New Hampshire, 312 U.S. 569, 85 L.Ed. 1049; Hague v. Committee for Industrial Organization, 307 U.S. 496, 83 L.Ed. 1423; Cox v. State of Louisiana, 379 U.S. 536, 13 L.Ed.2d 471. Therefore, this Court holds that Chester City Code Ordinance Section 27-201, 202, and 203 are facially valid under the Constitution of the United States.

II.

Appellants' claim that Chester City Code Ordinance Section 27-201 and 202 were unconstitutionally applied to their parade or procession. (Exception 2).

On this issue it should be noted that the opinions of City of Florence v. George, 241 S.C. 77, 127 S.E.2d 210 (1962) and City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961) enunciated the implicit standards of discretion to be utilized by municipal governing bodies in the granting or denial of parade permits, and it is clear that such standards comport with the Constitution of the United States. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 22 L.Ed.2d 162 (1969); Cox v. Louisiana, 379 U.S. 536, 13 L.Ed.2d 471 (1965).

Whether or not these statutes were applied in a constitutional manner is dependent upon the facts of the instant case. Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 222 (1972); Shuttlesworth v. City of Birmingham, supra; Gregory v. Chicago, 394 U.S. 111, 22 L.Ed.2d 134 (1968). Collin v. Smith, 578 F.2d 1197 (1978). Jackson v. Dobbs, 329 F.Supp. 287 (1970). In this connection, the language of Cox v. State of New Hampshire, 312 U.S. 569, 85 L.Ed. 1049, must be remembered:

> Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection.

In this case, the Chester City Council, pursuant to its ordinances, had granted three previous merits. The one time in which the marchers' application for a permit was denied was on November 10, 1979, due to a previously planned assemblage of Chester citizens who were celebrating Veteran's Day, an annual event for Chester County. The lower court found that the defendants' application for a permit was denied because the march was to end at the Chester County Courthouse on November 11, 1979, and the Veteran's Day activities were likewise scheduled. This clearly is not a discriminatory application of the ordinance by the City Council. As the aforementioned language of Cox v. New Hampshire, supra, states, in any other circumstances the Chester marchers may have been entitled to a permit, but with respect to the day of November 11, 1979, their First Amendment rights were in conflict with those who wished to attend the annual Veteran's Day celebration. There can be little doubt that such a conflict would be a legitimate reason for denying an application

for a permit in the interest of the public welfare. Cox v. New Hampshire, supra.

The City Council of Chester, in making its decision on this matter, did so based upon the criteria enumerated in Section 27-202 of the City Code, in the constitutionally approved language of the City of Darlington v. Stanley, supra, set out herein as follows:

> Such application shall contain the following information:
>
> (1) The time of such proposed parade or procession,
>
> (2) The streets to be used,
>
> (3) The number of persons or vehicles to be engaged, and
>
> (4) The purpose of such parade or procession.
>
> Upon receipt of such application, the Mayor or Council shall, in his or its discretion, issue a permit subject to the public convenience and public welfare.

Based upon such criteria, the Council found a conflict with the Veteran's Day celebration with respect to location, time, and purpose inasmuch as the record shows that the Chester marchers had no intention of celebrating Veteran's Day with the rest of those assembled for such purpose but, rather, they had intended on focusing on "public injustices" (Tr. p. 70). The City Council's decision was applied constitutionally inasmuch as it observed the standards implicit in the ordinance when it issued its reasons for denying the application. City of Darlington, supra.

Counsel for Appel'ants relies heavily upon the statement of Chester Mayor James T. Funkerburk as evidence of discrimination or arbitrary use of authority to deny the application. However, it is the opinion of this Court that whatever the Mayor's personal comments-as he testified they were-such were not binding upon the City Council, it should be emphasized that parade permits

under Chester City Code Section 27-201 must be obtained from the Council, not from the Mayor. To rule that the Mayor's statement, ipso facto, give rise to a finding of arbitrary and unlawful discrimination against these Appellants would be to hold, in its authority to legitimately refuse the issuance of permits when such action may be required in the interest of "the public convenience and public welfare." See City of Darlington v. Stanley, supra. The legitimate exercise of authority by a governing body is not so easily torn asunder.

Counsel for Appellants, however, asserts that Shuttlesworth v. City of Birmingham, supra, is dispositive of this case. However, this Court rules that the facts and result in Shuttlesworth are clearly distinguishable in the following particulars:

> (1) The ordinance ruled upon in Shuttlesworth had been one enacted by the City of Birmingham, and was broad in its scope, in attempting to regulate matters which had nothing to do with highway regulation or public welfare, but rather, attempted to regulate 'public morals, decency, and health.'
>
> (2) The Birmingham ordinance provided no criteria to guide a city commission in its determination of what violated the 'public welfare, peace, safety, health, decency, good order, morals or convenience.' The Alabama Supreme Court had not interpreted the ordinance until four years after the arrest.
>
> (3) The Birmingham ordinance encompassed every type of human conduct conceivable, and appeared to emphasize the regulation of human activity, as opposed to providing access of the public to the public streets.

(4) The United States Supreme Court focused upon the aforementioned language of the ordinance and concluded that it was overbroad and vague, in that there was no limit to the discretion of the City Commission. The Court further noted that at the time of the arrest there had not been given to the ordinance a constitutional construction by the Alabama Supreme Court.

(5) The United States Supreme Court found that the later constitutional construction by the Alabama Supreme Court was not sufficient assurance that the City of Birmingham would follow the statutory construction.

(6) Under the ordinance of the City of Birmingham, the Commission itself publicly declared that no permit would be issued to the marchers, and threatened the marchers with imprisonment. In this case the Mayor was expressing his personal opinion, and was not a voting member of the City Council.

(7) The marchers in Chester had been issued three prior parade permits to march by the City Council whereas the marchers in Shuttlesworth had not been issued a single permit.

(8) Unlike the factual consideration in Shuttlesworth, the parade permit in the Chester case was denied due to a conflict of location, time, and purpose with a pre-planned Veteran's Day celebration. There was no such conflict of assemblage in the Shuttlesworth case; indeed, there wasn't any other assembly going on at the time of the parade.

(9) The City Council's denial of the permit on November 10 was the first time a permit had been denied by the Council, and there is evidence in the record to show that subsequent applications were granted.

This Court holds, therefore, that the Chester City Code Ordinance Sections 27-201, 202, and 203, as applied to Appellants comported with the test enunciated in Shuttlesworth:

> Whether control of the use of the streets for a parade or procession was, in fact, exerted so as not to deny or unwarrantedly abridge the right of assembly in the opportunities for the communication of thought in the discussion of public questions immemorially associated with resort to public places.

III.

Appellants' claim of error as to admission of the application into evidence. (Exception 5).

The next issue argued before this Court by Appellants was the alleged error of the trial judge in admitting a copy of the application for permit which had been submitted on their behalf. They claim that it was error for the trial judge to admit into evidence a copy of the document, instead of the original. This Court finds, however, that any alleged error was not prejudicial inasmuch as there was ample other testimony in the record to show that an application had been submitted for a permit to parade in the streets of Chester. Therefore, it was merely cumulative to other competent evidence. State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978). In this regard, the Court also takes note of the fact that the evidence complained of demonstrates that Appellants complied with the formal requirements of Chester City Code Ordinance Section 27-202, and, therefore, is favorable to their position. An alleged error which is favorable to a defendant cannot cause such prejudice as would warrant a new trial. State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977); State v. Watkins, 262 S.C. 178, 203 S.E.2d 429, App.Dism'd. 418 U.S. 911, 41 L.Ed.2d 1157, 94 S.Ct. 3204 (1974). Appellant has demonstrated no prejudice to his rights arising from the fact that the document was a copy of an original.

IV.

Appellants' claim as to the alleged erroneous admission of the City Council's statement of reasons for denying the permit. (Exception 7).

The next issue argued before this Court is whether the lower court erred in admitting the City Council's statement of reasons for denying Appellants a permit to parade in the city streets of Chester. Of course, this evidence had a direct bearing on the central issues of the case, i.e., whether the City Council exercised its authority over this matter in a legitimate manner. The fact that the document was an original, instead of a copy, merely goes to its weight, not to its admissibility and this Court rules that the trial judge did not abuse his broad discretion in this matter. State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977); State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977), cert.den. 434 U.S. 894.

This Court takes notice that the ensuing questions of law were not argued by Appellants in their brief, nor were they argued at the hearing on this matter, and therefore may be subject to waiver under normal rules of appellate procedure. Cf. 7A West's S.C. Digest, Criminal Law, Key No 1178.

V.

Appellants' claim that the trial judge committed error by refusing to hear argument and ruling that a thirty day waiting period was constitutional in this case. (Exception 3).

It appears that on this exception Appellants argue that the Chester City Council unconstitutionally adopted an amendment to Chester City Ordinance Sections 27-201, 27-202, and 27-203 providing for a thirty day waiting period prior to issuance of a parade permit. The lower court found, and Appellants have not demonstrated otherwise, that the City Ordinances contained no

such amendment at the time Appellants' application for a parade permit was considered in this case. Therefore, this Court finds that the City Recorder did not abuse his discretion in ruling that the amendment had no relevance to the issues presented at trial. State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977); State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977), cert.den. 434 U.S. 894.

VI.

Appellants' claim that the trial judge refused to allow them to present testimony in support of their motions to declare the City Ordinance unconstitutional. (Exception 4).

On examination of this Record, this Court finds that the City Recorder gave Appellants every opportunity to make an offer of proof as to the testimony which they intended to present in support of their motions. If Appellants had felt that they were entitled to any additional testimony than that presented below, they should have placed into the record facts to be elicited from potential witnesses so as to preserve their Record for appeal. There appears to be no abuse of discretion on the part of the trial judge from this Transcript. State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977).

VII.

Appellants' claim that the trial judge committed error by considering a document not admitted into evidence. (Exception 6).

This Record does not indicate that the City Recorder based his decision upon anything other than evidence presented before him by the parties. Therefore, this exception is dismissed for lack of factual support in the Record. State v. Rouse, 262 S.C. 581, 206 S.E.2d 872 (1974).

VIII.

Appellants' claim that the trial judge committed error because the law does not support his ruling. (Exception 3).

This exception is dismissed inasmuch as it merely restates issues presented in his other Exceptions. Therefore, it leaves nothing for this Court to consider. State v. Campbell, 259 S.C. 339, 191 S.E.2d 770 (1972).

IT IS THE OPINION of the Court, for the reasons stated above, that the within appeal should be denied and dismised. It is, therefore,

ORDERED, that Appellants' Exceptions be, and the same hereby are, dismissed.

AND IT IS SO ORDERED.

George F. Coleman
Judge, Sixth Judicial Circuit

Winnsboro, South Carolina.
21 day of June, 1980.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF Order Dismissing Appeal HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING 1 COPY IN AN ENVELOPE PROPERLY ADDRESSED WITH POSTAGE PREPAID THIS 23rd DAY OF June, 1980.

ATTORNEY FOR Respondent

SWORN TO BEFORE ME THIS 23rd DAY OF June, 1980.

Notary Public for South Carolina (L.S.)
My Commission Expires 11/13/85

EXCEPTIONS

1. The Appellate Court erred by holding that the Chester City Code Ordinance Sections 27-201, 202 and 203 are valid on their face under the First and Fourteenth Amendments to the United States Constitution.

2. The Appellate Court erred by holding that the Chester City Code Ordinance Sections 27-201 and 202 were not unconstitutionally applied in this case under the First and Fourteenth Amendments to the United States Constitution.

3. The Appellate Court erred by holding that the Trial Judge did not deny the Appellants the right to present testimony in support of their motions to declare the City Ordinance unconstitutional.

4. The Appellate Court erred by holding that documents not in evidence that were considered by the Trial Judge was not prejudicial error.

AGREEMENT

It is agreed that the foregoing shall constitute the Transcript of Record and Exceptions upon which the appeal in said cause shall be heard by the Supreme Court and that copies of same may be filed by way of Return in the Court of General Sessions for Chester County and in the Supreme Court. Counsel certify that all irrelevant matter has been deleted and that the requirements of Rule 4 of the Rules of the Supreme Court have been satisfied.

GLENN B. MANNING
Attorney at Law

ATTORNEY FOR APPELLANT.

DANIEL R. McLEOD
Attorney General

KAY G. CROWE
Assistant Attorney General

LINDY P. FUNKHOUSER
Assistant Attorney General

WAYNE G. CARTER, JR.
Staff Attorney

JOHN R. JUSTICE
Solicitor, Sixth Judicial Circuit

By:
ATTORNEYS FOR RESPONDENT.